ABSTRACT

Title of Dissertation: A LONGITUDINAL STUDY OF THE U.S. SENTENCING GUIDELINES: A DECADE OF BALANCING JUDICIAL DISCRETION AND UNWARRANTED DISPARITY (1993-2003)

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This research focuses on judicial decision-making in the federal courts to determine whether unwarranted disparities persist, and also to gauge the change, if any, that occurs over time. Three sentencing outcomes were analyzed: the in/out incarceration decision, the length of term of incarceration decision, and the judicial downward departure decision. Eleven consecutive fiscal years of data from all 94 federal district courts were used to assess the effects of a defendant's gender, race and ethnicity, mode of conviction, offense type, district court location, and year of sentencing on the sentencing outcome. The results of the study were presented along two dimensions, namely as overall aggregate findings concerning the effects of these factors, and secondly, as findings concerning the effects of these factors on each individual fiscal year to measure the changes in the influence of these factors over time.

The aggregate findings show that female defendants are treated more leniently while black and Hispanic defendants were hampered in all three sentencing outcomes—Hispanics more so for the incarceration decision, and blacks more so for the length-of-term and the judicial downward departure decision. The mode of conviction was found to be highly significant, penalizing those defendants who were convicted at trial. The influence of the offense type categories, the fiscal year of sentencing, and many of the district court variables were also significant. The findings from the temporal analysis indicate that gender became less significant over time in the incarceration decision as the probability of going to prison increased for all defendants. The probability of Black and Hispanic defendants being incarcerated and of their length-of-term changed over time, but their likelihoods for receiving downward departures did not. The only change noted for the mode of conviction was for judicial downward departures, but the change was an even greater decrease in the likelihood of receiving this type of departure. Additional findings suggest that defendants sentenced for immigration offenses are treated differently at sentencing, and that differences in these three sentencing outcomes vary by district court and by the fiscal year in which the sentencing occurred.

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by

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DEDICATION

This work is dedicated to all individuals who work in the federal court system and whose lives are spent in the pursuit of justice. These people are some of the many unsung heroes and heroines of the criminal justice system. Their efforts to uphold and safeguard the freedoms and protections provided by the U.S. Constitution are exactly the kind of action that makes this country great.

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CHAPTER I. INTRODUCTION

In 1984, the United States Congress enacted the Comprehensive Crime Control Act. The Sentencing Reform Act (SRA) was included in this important federal legislation. The passage of the SRA eliminated indeterminate sentencing in the federal criminal justice system and created a determinate sentencing system based on Sentencing Guidelines formulated and promulgated by a new federal entity called the U.S. Sentencing Commission. The presumptive Federal Sentencing Guidelines took effect in November 1987, and the United States Supreme Court upheld their constitutionality in an important ruling in 1989 (see *Mistretta v. United States*, 488 U.S. 361 (1989), 109 S. Ct. 647 (1989)). The principal purpose for the passage of these legislative reforms contained in the SRA was to reduce unwarranted disparity in sentencing outcomes in the federal court system due to the effects of extralegal factors such as race, ethnicity, gender, age, and socioeconomic status. In particular, these reforms were aimed at increasing the consistency between sentences for offenders convicted of similar crimes by narrowing the scope of judicial discretion and by increasing the certainty and, in some cases, the severity of punishment for convicted offenders (Tonry, 1996).

Since the establishment of the Guidelines, a number of research studies have analyzed sentencing outcomes for offenders convicted in the federal criminal justice system. Even the U.S. Sentencing Commission has collected and analyzed sentencing data in order to monitor and evaluate the implementation of the Sentencing Guidelines. Many of these studies have attempted to measure the reduction, if any, in sentencing disparity by gender or across racial and ethnic categories. Despite this growing body of research, there remains a lack of consensus regarding the integrity of sentencing under a

presumptive guidelines regime across different judicial districts from a longitudinal perspective. A presumptive sentence attaches a penalty to a conviction that must be adhered to by the sentencing court unless extraordinary mitigating or aggravating circumstances relating to the case demand either an increased or a decreased penalty (Tonry, 1992; 1993). Additionally, there has been too little focus on unraveling the discretion of federal judges apart from the conduct of other courtroom actors and separate from the influence of the presumptive sentence prescribed by the Sentencing Guidelines themselves. To build a cohesive theory of sentencing under the Federal Sentencing Guidelines, a longitudinal study which takes these variables into account is needed.

This dissertation will review the results and conclusions of previous research studies and present new research hypotheses to examine the balance between judicial discretion and residual disparity due to extralegal variables such as race, ethnicity, and gender constructed within a longitudinal framework. The empirical analysis will use similar variables and methods as previous studies that have examined the effects of extralegal variables on sentencing outcomes in the federal courts. However, it will also build upon the foundational findings from research studies of state sentencing guidelines systems. Specifically, it will use sentencing data on convicted federal offenders during the period of fiscal years 1993 through 2003. The year of sentencing will be the principal component of longitudinal measurement and judicial districts will be used to determine geographic differences. In addition, it will analyze sentencing data from the spectrum of convicted crimes in the federal system by a grouping process which will place each type of crime into categories to examine differences in sentencing outcomes between white, black, and Hispanic male and female offenders. It is hypothesized that male and female

offenders of different races and ethnicities will receive disparate treatment between judicial districts and over time as measured by the in/out incarceration decision and the length of term decision, but that these disparities in sentencing outcomes should lessen as the Guidelines become more accepted and adhered to by the federal judiciary. It is also hypothesized that the racial, ethnic, and gender disparities that occur as a result of downward departures granted by federal judges will decrease between judicial districts and over time as sentencing under the Guidelines becomes more normative and standardized.

This dissertation contains eight chapters. The first chapter introduces the topic of the undertaken research. The second chapter reviews the history of the emergence of presumptive sentencing guidelines and the historical context underlying the transition to a determinate sentencing system. It discusses the roles of federal judges and the efforts of sentencing reform to reduce the discretion exercised by them. It explains the process of applying the Guidelines at sentencing. It also reviews the criticisms of the Sentencing Guidelines and important legal cases that have contributed to their development, culminating with a discussion of their current status. The third chapter summarizes the research that has examined racial, ethnic, and gender disparity in sentencing outcomes under sentencing guidelines in the federal system and various state systems. The fourth chapter discusses the theoretical underpinnings of criminal justice sanctions and courtroom behaviors, with a particular focus on judicial behavior and the sentencing decision. It then presents the hypotheses to be tested in the current study. The fifth chapter presents the methodological framework for measurement and analysis and discusses the data and variables utilized to perform the longitudinal analysis. The sixth

chapter presents the descriptive statistics of the variables and the results of the bivariate correlation analysis between the variables. The seventh chapter summarizes the results of the multivariate empirical analysis by describing the significant effects of the independent variables on the three judicial outcome decisions, namely the incarceration decision, the length-of-term decision, and the judicial downward departure decision. These findings are presented along two dimensions in order to present, first, an overall view of sentencing and then, second, a year-by-year analysis to measure change over time. Finally, chapter eight contains the conclusions which were formulated from the research findings, outlines the research caveats, and addresses certain policy implications that may be inferred from the findings of the study.

CHAPTER II. SENTENCING COURTS AND SENTENCING GUIDELINES

History of U.S. Sentencing Commission and Federal Sentencing Guidelines

Justice is commonly portrayed as a blindfolded woman who holds a balancing scale in one hand and wields a sword in the other hand in order to represent the measurement of justice and the exaction of revenge upon the guilty. The blindfold represents equality, meaning that justice judges facts not persons. Hence, the intangible ideal of balanced justice is brought to life through palpable form and features. With justice personified, the belief that justice can be accomplished and its significance for a democratic society becomes solidified.

The ideal of equal justice and equality under the law are embedded in the amendments accompanying the Constitution of the United States and are ingrained in the citizenry as inherent rights necessary to sustain a free society. Notwithstanding, the law has treated people differently. In response to the detrimental treatment of those people, the criminal justice system has been scrutinized and studied by practitioners and non-practitioners alike. The consequences of this concerted effort played a prominent role in influencing the development of a determinate federal criminal justice system that promised to treat all individuals alike. The end result was embodied in a solution to ensure that every convicted offender is treated alike in order to make sure that no one is treated differently.

In trying to accomplish the ideal of equal justice, many scholars and practitioners have proposed ideas to overcome discrimination at various locations in the criminal justice system. Judge Marvin E. Frankel (1972), a distinguished judge serving on the federal bench in the Southern District of New York, is credited with taking the theoretical

discussions surrounding sentencing guidelines and building a concrete formula for their implementation in the federal criminal justice system. His book gave form and feature to an idea of sentencing, helping it to gain momentum and force and political proponents until the idea was given life in the Sentencing Reform Act (SRA) of 1984. Congress's historic passage of the Sentencing Reform Act aimed to correct and remedy unwarranted sentencing disparities (Hall, 1999).

The push for sentencing reform has ebbed and flowed throughout the last century. However, the latter end of the twentieth century appeared to herald the end of the era of indeterminate sentencing in the federal criminal justice system, in favor of sanctioning all people alike based on their crimes and disregarding their individual circumstances. The concept of sentencing reform was originally conceived by and credited to liberal political reformers during the 1970s as an anti-imprisonment and antidiscrimination measure. Liberal politicians felt that Sentencing Guidelines would ameliorate the problems concerning discrimination and the ideal of equal treatment under the law; a result arising out of the exercise of such wide discretion by federal judges, whose power to determine a sentence under the indeterminate federal statutes appeared almost limitless. Sentencing reform eventually evolved and was brought about as part of a more conservative law-and-order crime control measure during the early 1980s, although it was still widely supported on both sides of the political aisle. Conservatives supported the reforms because of perceived leniency in sentencing offenders convicted of egregious crimes (Anderson et al, 1999).

The Comprehensive Crime Control Act was enacted in 1984 and contained major federal criminal law reforms. Among the reforms was the Sentencing Reform Act of

1984 (SRA), which established the U.S. Sentencing Commission as an independent commission within the judicial branch of the federal government (Hauser, 1993). The result was a transfer of sentencing authority from individual federal judges to an administrative Sentencing Commission. The U.S Sentencing Commission (hereinafter Commission) employs personnel who are equipped with specialized technical competence in the area of sentencing to formulate Guidelines and policy directives using comprehensive procedural approaches and who are supposed to be insulated from short-term political pressure (Tonry, 1993; Payne, 1997). However, some critics have suggested that, as a bureaucracy, it has in some cases proven to be even less responsive to judicial concerns about fair and just punishment than the elected politicians in Congress (Stith and Koh, 1993; Tonry 1992; 1996).

The Commission was formed to draft Guidelines that would narrow the disparity in sentences imposed by federal courts upon similarly situated defendants for comparable criminal conduct. This original group of nationally-recognized sentencing practitioners and experts designed the Guidelines to incorporate a wide variety of legally relevant factors that were considered important under prior federal sentencing practice (Kautt and Spohn, 2002). The Commission's ruling body has seven voting members and two ex-officio members. Three of these Commissioners must be sitting federal judges, and no more than four may be members of the same political party (Ogletree, 1988). The three federal judges are chosen from a group of six recommended by the Judicial Conference of the United States (Sisk et al., 1998).

The seven Commissioners are appointed by the President and confirmed by the U.S. Senate. They each serve six-year staggered terms. Over the years, these politically-

appointed Commissioners have consisted of lawyers from private firms, attorneys from the federal government, federal judges, an economist, a sociologist, a member of the U.S. Parole Commission, and a few professors of law. One Commissioner, Stephen G. Breyer, has gone on to become a U.S. Supreme Court Justice. The Commission's chairperson has always been a federal judge. This makes the Commission unique because it consists of members from the judicial branch of government, but is empowered to perform functions of the legislative branch of government. For the Guidelines and their amendments to become law, the U.S. Congress must not enact a law to the contrary before the congressional term expires each year on May 1. By not acting before the deadline, the proposed Guidelines become law.

The Commission was mandated by the U.S. Congress to develop and promulgate Guidelines characterized by honesty, uniformity, and proportionality (Mustard, 2001). This statutory mission was interpreted by the Commission to further the basic purposes of criminal punishment through deterrence, incapacitation, and just deserts. Rehabilitation was also included as a lesser, but still important, under-girding to the formulation of the Guidelines (USSC Guidelines Manual, 2001). Thus, the Commission was established and recognized as an official government agency with the responsibility for developing the Guidelines.

The final draft of the Sentencing Guidelines was written at a late date in some haste to meet the "unreasonable submission deadline" set by the U.S. Congress (Ogletree, 1988, p. 1,947). The principal intent of the original Commissioners in drafting the Guidelines was to achieve uniformity among similar criminal conduct and proportionality between different types of offenses (U.S. Sentencing Commission, 1991). For the most

part, the penalty ranges of the Guidelines were estimated using typical, or average, sentence lengths for each offense category based on a study of past sentencing practices. This was viewed as a way to bridge historical and future sentencing practices in a manner that would invite voluntary participation from the federal judiciary (Harcourt, 2003). The penalty ranges were also influenced by Congressional pressure applied through the concurrent passage of mandatory minimum and career criminal statutes, resulting in a "problematic merging" of mandatory penalties with the Guidelines (Kautt, 2002, p. 638). Consequently, the Commission established ranges that were significantly more severe than past practice for certain crimes such as drug trafficking, white collar crime, robbery, murder, aggravated assault, immigration offenses, and rape (U.S. Sentencing Commission, 2004).

The Guidelines were to be completed and implemented by the federal criminal justice system on November 1, 1987 (see Tonry, 1996 for a complete history). The focus on the individual offender and an individually-tailored sentence was shifted to a new system that focused on the criminal offense and arranged for numerical equality in sentence length for defendants convicted of similar crimes. The Guidelines explicitly prohibit consideration of factors "not ordinarily relevant" (U.S.S.C. Guidelines Manual, 2001, p. 384). Through policy statements and amendments, this broad prohibition has come to include youthful age, education and vocational skills, mental and emotional conditions, physique, drug and alcohol dependence, employment record, family ties and responsibilities, community ties, race, sex, national origin, creed, religion, socioeconomic status, military, civic, charitable, or other public service, lack of guidance as a youth, and

similar circumstances indicating a disadvantaged upbringing (Harcourt, 2003; Mustard, 2001).

Regardless of these monumental efforts to achieve the ideal of equal justice, disparity has not altogether been eradicated. Equal treatment of all persons convicted of the same crimes has not resolved the differences created by the unique and varied circumstances of individual offenders. Instead, "identical treatment regardless of individual differences has eviscerated our more refined notions of individual justice, and the belief that "justice is blind" has yielded to the reality that, in fact, blind justice is injustice" (Ogletree, 1988, p. 1,960). Justice requires both uniformity, where similar offenders who commit similar offenses are sentenced similarly, and fairness, where the sentencing judge considers all knowable exigencies of a particular situation so that a just sentence is imposed (Levine, 2002; Bush, 1990).

Federal Judges and Discretion

Spurred by concerns to defend their sentencing decisions in the public spotlight, several individual judges spoke out in public forums to share their personal opinions about sentencing reform. While compelling, the remarks of these individual judges was not equal to the potential weight of the body of the entire bench membership. Their participation was construed as a way to avoid a legislative solution that would in effect dictate their work, magnifying and micromanaging a process which, historically, was viewed as their unique litigious domain.

As a result, the federal judiciary, as a unified body, had little influence on the development of sentencing reform legislation. Instead, for the most part, federal judges always stayed on the periphery of the sentencing reform debate, almost as if by ignoring

the problem, it would fade away into obsolescence. The organized federal judiciary's governing body, the Judicial Conference of the United States, took little, if any, initiative to explore changes in sentencing procedure with interested congressional staff members or people in the academic world. In short, "the federal judiciary's failure to forestall the Senate's passage of the bill authorizing the passage of the Sentencing Reform Act and its inability even to convince the Senate to assign judges the predominant role in developing Sentencing Guidelines were, in retrospect, defaults of decisive significance" (Stith and Koh, 1993, p. 230).

In retrospect, it is difficult to think of any action substantial enough to thwart or even delay sentencing reform any longer. Sentencing reform was imminent. Perhaps the Judicial Conference would have been successful if they had lobbied for Guidelines that were advisory rather than presumptive. In this manner, they would have worked in cooperation with Congress to devise the Guidelines rather than have a rigid system of rules thrust upon them.

One of the principal purposes of the Sentencing Reform Act (SRA) was to limit judicial discretion. Discretion, in this context, refers to "the means by which actors in the criminal justice system substitute their own judgment, interests, or objectives for formally specified statutory punishments in order to influence criminal justice outcomes" (Kessler and Piehl, 1998, p. 256). Up until this time, an indeterminate system had bestowed wide latitude upon federal judges in determining appropriate sentencing options. They exercised an enormous and virtually unreviewable amount of discretion when determining a suitable sentence. Prior to the adoption of the SRA, federal judges' discretion seemed almost infinite, as long as the sentence imposed did not exceed broad

statutory limits (Ogletree, 1988). While viewed as positive and necessary by the judiciary, this latitude was not seen in the same positive light by the other members of the courtroom workgroup. Thus, the ability of the Sentencing Guidelines to limit judicial discretion was hailed by conservatives and liberals alike. Sentencing Guidelines would supposedly sentence offenders convicted of like crimes alike. No offender would 'get off easy,' nor would he receive a harsher sanction than was called for by the criminal offense.

For this reason, when the U.S. Sentencing Commission was established, many judges serving on the federal bench were visibly shaken and upset. Some were outraged. They knew that the Sentencing Guidelines would limit their discretion and many felt as if their hands were being tied. More than a few judges expressed concerns that they would be unable to perform their judicial functions so as to satisfy the demands of justice required for each individual and unique case. Unfortunately, the independence and autonomy many federal judges held as a virtue of their position also contributed to their loss of power to exercise broad discretion over the sentencing decision. According to Stith and Koh (1993), disgruntled federal judges have no one to blame but themselves for two important reasons. First, they failed to address sufficiently the issue of disparity in sentencing as a unified judicial conference when it surfaced as a significant political issue in the 1970s. Second, they failed to unite their voices of dissent in such a way as to anticipate or to persuade Congress of the potential detrimental consequences of the Sentencing Reform Act before it was passed.

In any case, many judges refused to adhere to the Sentencing Guidelines. During 1988, federal district judges were compelled to address the issue of whether the

Sentencing Guidelines were constitutional in nearly 300 separate case decisions. In almost two-thirds of the rulings, federal judges invalidated the Guidelines on various constitutional grounds as challenged by the defense counsel (Sisk et al., 1998). As one district judge commented at the time, federal criminal sentencing had quickly dissolved into chaos (see *United States v. Ortega Lopez* 684 F. Supp. 1506, 1520, & n.12 (C.D. cal. 1988)(en banc)). The sentencing crisis was resolved on January 18, 1989, when the constitutionality of the Sentencing Guidelines was upheld in an 8 to 1 decision of the U.S. Supreme Court in *Mistretta v. United States*, 488 U.S. 361 (1989), 109 S. Ct. 647 (1989).

The *Mistretta* decision is historic in its importance because it clearly marked the end of the era of the indeterminate sentencing system in the federal criminal justice system. In subsequent years, the Truth in Sentencing Act was passed limiting sentence reduction for good behavior to fifteen percent, discretionary parole was abolished, and mandatory minimums were put into place for certain crimes, particularly those involving drugs. Federal judges have come to accept the Sentencing Guidelines, and some have even pointed to the benefits of standardizing the sentencing process. For those judges appointed to the federal bench after the Mistretta decision, sentencing by the Commission's Guidelines is all they know. The other federal judges with longer tenure similarly follow suit, possibly deferring to the principle of faithful adherence to a higher court's precedents in combination with the desire to make sound decisions that produce congruence in typical cases involving settled issues of law (Klein and Hume, 2003).

There are currently 94 district courts, each state having at least one district and as many as four districts. Likewise, the Unites States and its territories are divided into 12

regional circuits, each including three or more states (with the exception of the District of Columbia circuit) (Kautt, 2002). The number of judges varies by district. The amount and type of workload carried by each judge varies as well. There is no formalized system of guidance or oversight of a federal judge's independent caseload among the district or circuit courts, although statistics on the work load of district courts are included in the Annual Report of the Director of the Administrative Office of the U.S. Courts (Smith and Dickey, 1999; Sisk et al., 1998).

Federal judicial nominations have received widespread notoriety in the media over the past few years. Earning a seat on the federal bench requires both patience and thick skin to get past the contentious political maneuvering of both major political parties. Once the president submits a nominee's name to the judiciary committee of the U.S. Congress, the potential judicial candidate must be approved by a majority vote (Johnson and Songer, 2002). Appointments are for life, or until judges decide to retire or relinquish their post for a job in the private sector. Thus, federal judges are supposedly free from the political pressures of local and national politics (Tonry, 1993). They do not need to worry about being re-elected. They are insulated from local community or constituent expectations. They are also removed from the impact of local concerns such as racial and ethnic immigration. Their only concern should be whether their judicial decisions will be upheld on appeal to the higher circuit courts (Pribil, 1992; Reitz, 1998). At the same time, however, federal judges are not immune from potential political influence if they are seeking career advancement within the federal judiciary, such as the opportunity to be nominated and appointed to the appellate courts or even the U.S. Supreme Court (Sisk et al., 1998).

Application of the Federal Sentencing Guidelines

Sentencing under the Federal Guidelines is dependent upon two factors—offense seriousness and criminal history. All legal variables should be contained within these two factors. Whether the offender is committing his first crime or his tenth crime, this is calculated into the criminal history score. The criminal history score is determined by the number of prior convictions, the length of the sentences that were imposed for each, and how recently the offender was last convicted or incarcerated for any prior offenses.

The criminal history score is determined in large part by the length of prior sentences rather than on an evaluation of the nature and seriousness of prior criminal conduct. The Commission itself has acknowledged that the criminal history score is unlikely to take into account and might not reveal all the variations in the severity of criminal history that may occur (Hauser, 1993). For this reason, once calculated, the criminal history score is not final. The Commission has provided judges with some discretion to depart from the designated criminal history score when reliable information regarding the criminal history background of the defendant indicates that the score fails to reflect adequately the seriousness of the offender's past conduct or the likelihood that the offender will commit crimes in the future (Freedman, 2001).

Whether the offense was bank robbery or distribution of illegal drugs and all of the legally relevant conduct that occurred as part of the offense is calculated into the offense level or seriousness score. The offense level begins with a base offense level (BOL) assigned to each crime category, and is then modified by specific mitigating or aggravating offense characteristics (SOCs) that could raise or lower the offense level along its range. The offense level is further refined under the general adjustment

provisions such as whether the offender obstructed justice or has accepted sufficient responsibility for the criminal conduct. Additionally, the Guidelines take aggravating circumstances into account such as offenders whose criminal histories consist of two or more felonies, offenders receiving substantial portions of their income from criminal activity, those leading a conspiracy of three or more, and those who commit an offense while under state or federal criminal jurisdiction for a previous offense (Karle and Sager, 1991).

Meanwhile, all extra-legal variables should be excluded unless under extremely extraordinary circumstances. In other words, age, race, ethnicity, gender, education, socioeconomic status, mental and physical health, parenthood, and other status characteristics are prohibited from being factored into the sentencing decision (Bush, 1990). Nor do the Guidelines allow for consideration of important offender characteristics such as prior drug history and the extent of the individual offender's blameworthiness for the specific crime for which he is being sentenced. Instead, the Commission concluded that only the defendant's criminal history, his dependence upon criminal activity for a livelihood, and his acceptance of responsibility for his wrongdoing were relevant sentencing factors. These factors place all the focus on the harm caused by the offender's criminal act and little, if any, emphasis on circumstances that might serve to mitigate the punishment (Ogletree, 1988).

Once the final offense level and criminal history score are calculated, the court refers to the sentencing table for the prescribed sentencing range. The Guidelines include a sentencing table with 43 offense levels on a vertical axis and 6 criminal history categories on a horizontal axis. Each cell in the 43 rows by 6 columns table contains a

range of months of imprisonment in which the judge must sentence the offender, unless circumstances warrant the granting of a departure. Each individual range overlaps with ranges in the preceding and succeeding levels (Houser, 1993).

The sentencing table is further divided into four zones that point out where available probation and intermediate sanctions are deemed appropriate sentencing alternatives. Zone A is located at the top of the grid and prescribes all possible sentencing ranges between zero and six months. That is, Zone A is the only part of the grid where only probation, without any kind of confinement, is an available sentencing option (see Guidelines Manual §5E1.1(a)(1)). In Zone B of the sentencing table, judges have the option to sentence convicted offenders to a combination of probation with confinement conditions to include either imprisonment or intermediate sanctions (see Guidelines Manual §5B1.1(2)). In Zone C of the sentencing table, "split" sentences of imprisonment and intermediate sanctions are available sentencing options for the judge, but confinement conditions in conjunction with probation is no longer included as a sentencing option (see Guidelines Manual §5C1.1(c)(3),(d)(2)). Finally, in Zone D of the sentencing table, incarceration is the only sentencing option available to judges.

The inclusion or exclusion of certain offense characteristics can produce drastic differences in sentencing outcomes. One example of the tremendous variation resulting from the application of enhancements is demonstrated by convictions for offenses involving firearms. Offenders whose crimes involved the use of firearms are subject to increased penalties under federal statute 18 U.S.C. §924(c). Along with mandatory minimum laws for drug offenses and other serious federal crimes, Congress has enacted and amended federal laws for offenses involving firearms. Indeed, their frequent use of

crime control measures such as mandatory minimum penalties shows an obstinate preference for obligatory statutes over the Commission's Guideline enhancements (Hofer, 2000).

In response, the Commission has created several idiosyncratic rules for offenders convicted of the firearms statute. As with similar mandatory minimum statutes for drug offenses, the Commission attempted to accommodate the statutory penalties by matching them up with Guideline penalties. However, this merely resulted in two overlapping and, in some respects, inconsistent sets of rules delineating sentencing for firearms offenses. Moreover, the Commission has found that firearm enhancements are not applied in all the cases where they appear legally warranted. This application difference varies across district jurisdictions. The significance of this disparity cannot be understated because if the enhancements are not evenly applied, incapacitation is not accomplished and the deterrent effect of the Guidelines is undermined. Inconsistent application weakens the Guidelines' ability to achieve proportionate sentencing and avoid unwarranted disparities among similarly situated offenders (Hofer, 2000).

Under the Guidelines, weapon involvement in the offense is included as a Special Offense Characteristic (SOC), and is frequently decided by the judge at a sentencing hearing. The standard of evidence at these hearings is by preponderance of evidence. The Guidelines neither require that a weapon be charged in the indictment, nor that the defendant be convicted specifically of weapon use. They only distinguish between certain behaviors such as possessing, displaying, brandishing, threatening, and discharging a weapon. Because of the relevant conduct provision, the weapon SOC in the Guidelines can be applied even if a defendant is acquitted of a section 924(c) count in

a multi-count indictment. Any weapon that is present at a location where the offense conduct occurred triggers the SOC application. The burden is on the defendant to disprove that the gun was related to the crime (Hofer, 2000).

Whether or not a judge decides to apply the SOC, or whether the prosecutor charges the defendant with that statute or dismisses gun counts can result in two offenders who have engaged in similar conduct receiving vastly different sentences. Discretion exercised by these court actors is what makes the difference. The Guidelines cannot change this. Instead, the consequences of sentencing reforms such as the firearms statute with its increasingly draconian penalties becomes just another weapon in the arsenal of the prosecutor to negotiate a plea agreement. The consequence of these rigid statutes is that fairness becomes more dependent on the discretion of court actors and less on strict application of rule of law (Hofer, 2000).

Failure to apply sentencing enhancements for special offense characteristics such as the weapons SOC is known as "circumvention." It is important, however, to distinguish between circumvention prompted by the desire to evade the Guidelines and that prompted by a desire to avoid mandatory minimums. It cannot be automatically assumed that sentences resulting from Guideline evasion are necessarily "wrong." Sometimes they are. But sometimes Guideline circumvention produces arguably just results. The principal problem with Guideline circumvention is that it occurs in a context that forecloses oversight and obscures accountability. The persistence of circumvention in a significant minority of the guilty-plea cases presents a risk to the overall success of the Federal Guidelines effort (Nagel & Schulhofer, 1992).

This example of applying the weapons enhancement is just one way of demonstrating the fact that the Guidelines need more flexibility. Yet, an effort to achieve greater flexibility must at the same time remain attuned to the need of preserving a system of structured discretion that avoids opening the sentencing process to widespread and problematic disparities like those that prompted the Sentencing Reform Act in the first place. What is at stake is the subtle balance between flexibility and structure, a balance that may need further refinement in order to reach its goals. This balance is complicated further by the constant requirement to adjust and fine tune the system based on the unforeseeable needs of the future (Wilkins and Steer, 1993).

Criticisms of the Federal Sentencing Guidelines

The Federal Sentencing Guidelines have been criticized for a number of reasons. Most of the criticisms point to the rigid inflexibility and complexity of the Guidelines. Tonry (1996) presents a thorough and critical review of the criticisms of the Federal Sentencing Guidelines. It is important to mention a few of them here. First, the Federal Sentencing Guidelines have come to be perceived as "mandatory" rather than presumptive. Since their enactment, the Commission has sent a mixed message to federal judges by first telling them to consider the recommended range calculated by the Guidelines, but then sending new directives that require the judges to impose the Guideline's sentence unless a particular circumstance that the Commission has failed to adequately consider is uncovered (Stith and Koh, 1993). Thus, while the products of the Sentencing Commission's labors have been given the modest name "Guidelines," they have had the full force and effect of laws, prescribing the sentences criminal defendants are to receive. The discretion of federal judges to depart outside of the presumptive

punishment ranges has been extremely limited and discouraged by the Commission. In fact, critics assert that calling them "Guidelines" is somewhat of a misnomer (Cabranes, 1994; Doerner, 1989; Gomez, 1995).

A federal district court is directed to impose a sentence within the applicable prescribed Guideline range, if it finds the case to be a "typical" one (*Koon v. United States*, 518 U.S. 81, 85, 1996; *Mistretta v. United States* 488 U.S. 361, 413, 1989). The Supreme Court, in *Koon v. United States*, ruled that appellate courts should use an abuse of discretion standard in reviewing the district courts' application of the Guidelines to the facts of the offense conduct at sentencing. Their decision also reasserted a district court's prerogative to determine whether a particular factor or circumstance takes the case outside the heartland and warrants a departure. Defining what involves a "typical" or heartland case has proven to be as difficult as defining what constitutes an "extraordinary" circumstance. Any departures must be justified enough to convince appellate courts that the Commission did not already adequately consider the defendant's personal circumstances. A judge who disregards them or departs from them can expect his decision to be reversed upon appeal (Klein and Hume, 2003; Stith and Cabranes, 1998).

Second, the Guidelines have been criticized for being unnecessarily complex (Ruback, 1998; see Kramer, 1998 for a rejoinder). The complexity of the Guidelines is born of an exhaustive attempt to create a system that would most fairly punish convicted offenders in the same way for similar crimes (Hall, 1999). The sentencing grid is composed of 43 separate offense levels and six different criminal history categories, and this complexity may actually increase the risk of miscalculation and unreliability in

sentencing like offenders alike. The Guidelines are difficult to understand, impossible to apply even-handedly, and frequently difficult to predict. Annual amendments by the Commission have resulted in over five hundred changes in sentencing law during the first five years following the implementation of the Sentencing Guidelines (Wilson, 1995).

The Federal Guidelines are anything but simple. There are a myriad number of adjustments that can be applied to raise or lower the final offense level. A principal example of additional adjustments is the application of the Safety Valve. This adjustment is frequently used for first-time offenders who are subject to mandatory minimum penalties. It is intended to offset mandatory sentences in certain circumstances by mitigating the sentence. However, proving all the requirements to apply the Safety Valve mechanism has been shown to be extremely difficult, contributing to its apparent arbitrary application (Pribil, 1992; Maxfield and Kramer, 1998)

One Senior Judge of the U.S. Court of Appeals for the Second Circuit has criticized the Guidelines for their "excessive complexity" (Newman, 2000, p. 56). As an example, he cites the loss tables for theft crimes where the formulation resulting from the Commission's extraordinary detail "carries a sound general principle to an absurd extreme" (p. 56). In other words, the theory of graduated punishments building upon the amount of loss appears to be a sound idea, but when put into practice, amounts to the displacement of sound judgment owing to the estimates of amounts of calculable loss, which are frequently imprecise.

Monetary loss is highly contingent on both the discretion of investigating agents and the discretion of prosecutors, all of whom must take into consideration the financial and temporal constraints of building a successful case. This judge contends that the

Commission's detailed loss tables are exactly backwards in that they start with the amount of loss, which largely determines the sentence, and then provides slight adjustments for various factors, such as role in the offense. He suggests that the current Commission move away from the overly excessive and detailed complexity devised by the original Commissioners (Newman, 2000).

The Guidelines require that sentencing in criminal cases for numerous offenses depends primarily on the calculation of certain quantitative amounts of loss related to the crime. This requirement has in turn created a need for statistical inferences about quantity. In drug cases, the quantity of drugs and their corresponding weight is relevant in determining the Base Offense Level (BOL). In fraud cases, the amount of money lost is relevant in determining the principle Special Offense Characteristic (SOC). In ########## and software copyright cases, the quantity of materials and their corresponding market value is relevant. Because of the emphasis placed on quantity in determining the proper sentence on the Guideline's grid, proper methodology in the practice of statistical sampling and inference approaches to estimate the appropriate quantities is necessary. Since quantitative amounts are used as the basis for sentencing, improper sampling and statistical inference can undermine the interests of justice (Izenman, 2000).

Criminal practice in federal courts requires a sophisticated understanding of the Guideline application rules. The Sentencing Commission maintains a telephone hotline for probation officers to call with questions when calculating the recommended Guidelines sentence for the Pre-sentence Investigation Report (PSR). In addition, judges must consult both the relevant statute and the Guidelines when determining a defendant's

sentence. Ultimately, the statutory maximum or minimum trumps the Guidelines if they are inconsistent, but usually they are not (Hofer, 2000).

The Commission has consistently attempted to fit the Guideline ranges within both the maximum and minimum statutory penalties. When the applicable Guidelines range is within the statutory penalty range, the Guidelines range is determinative, and any sentence chosen by the judge from within this range is permissible. Otherwise, rules have been formulated for handling exceptional cases. When the statutory minimum exceeds the Guidelines range, the judge is directed to use the statutory minimum as the sentence. When the statutory maximum is less than the Guidelines range, the judge is direct to us the statutory maximum as the sentence.

To complicate matters further, a new Sentencing Guidelines Manual is published by the Sentencing Commission each year that incorporates the revisions and amendments adopted by Congress. The Commission is constantly monitoring court decisions. Because of constantly evolving case law, the Commission claims that the amendment process is valuable because "Congress foresaw the necessity for periodic amendment of the Guidelines, envisioning a dynamic, progressive sentencing policy centered around Guideline application experience" (Wilkins and Steer, 1993). The Commission was empowered by the Sentencing Reform Act with the initial and primary task of addressing intercircuit conflicts in Guideline interpretation. Hence, the system is set up so that the Commission is always playing catch up. This has further complicated the issue of Guidelines application because the question arises of whether to apply the current Guidelines manual at the time of sentencing, or whether to apply a previous Guidelines manual that was in effect at the time the offense was committed.

The Commission has attempted to elucidate the manual application question by requiring the sentencing judges to apply the Guidelines manual in effect at the time of sentencing. Yet, every circuit has rejected sentences produced by this rule where an applicable Guideline was revised to the offender's detriment between the time the offense was committed and the time of sentencing (Ferranti, 2003). This ubiquitous rejection is based on the Ex Post Facto Clause of the Constitution, which stipulates that no law shall be upheld which acts retrospectively to disadvantage an offender.

However, by applying the Guidelines manual in effect at the time of the criminal conduct, the problem is still not completely resolved. For example, if a defendant committed the offense for the first time one year and then committed the same offense a second time the following year, the question then arises as whether to apply the Guidelines manual in effect at the beginning of the criminal conduct or at the end of the criminal conduct? The circuits have not dealt equally with this question.

A third criticism of the Federal Sentencing Guidelines asserts that, rather than reserving the most stringent penalties for the most egregious crimes, the entire spectrum of sentences imposed are harsher than they were under an indeterminate system. The passage of draconian mandatory minimum sentences by the U.S. Congress contributed to this increase because mandatory penalties will always "trump" a Guideline (Hofer, 2000, p. 52). In response, the Commission raised the entire penalty grid to match the mandatory minimum penalties and avoid sentencing cliffs, thus increasing the overall sentence lengths for all convicted offenders (Wicharaya, 1995; Tonry, 1996).

Fourth, the discretion once exercised predominantly by judges is transferred in large part to the prosecution. Whereas the actions of the bench are maintained in the

courts' records, the actions of the prosecution are frequently done behind closed doors and are not subject to public scrutiny. The role played by the prosecution has become larger and more important in determining the final outcome of the convicted defendant. This shift has likewise affected the role played by the defense counsel (Hall, 1999; Weinstein, 1999). For example, departures that reward the defendant for his cooperation, known as "substantial assistance" departures, may only be awarded upon motion of the prosecution (Steffensmeier and DeMuth, 2000; Maxfield and Kramer, 1998). Otherwise, the bench cannot make an independent determination of assistance to the Government to depart outside of the Guidelines.

According to Stith and Cabranes (1998, p. 78), the Guidelines attempt to repress the exercise of informed discretion by judges so that now the judge "merely functions as an automaton by mechanically applying the stark formulae set by a distant Sentencing Commission." Under the Guidelines regime, the sentencing discretion of the federal district courts has been so severely constrained that the inescapable conclusion is that the Guidelines, rather than the judges, now dictate the sentence imposed (Ferranti, 2003).

Reduction of unwarranted disparities in sentencing outcomes was one of the primary goals of the Sentencing Reform Act (SRA). The SRA mandated that the Guidelines be entirely neutral to extra-legal factors. This included the defendant's socioeconomic status. It has long been recognized that indigent defendants who are represented by public defenders and court-appointed attorneys do not receive sentencing outcomes as favorable as defendants who are not in such penurious circumstances (LaCasse and Payne, 1999; Gould, 1973). The Guidelines were supposed to ameliorate this problem. Instead of correcting this state of affairs, however, the situation has been

exacerbated by making a defendant's sentence even more dependent on the quality and nature of a defendant's representation (Hall, 1999).

A defendant's sentence is now determined, in large part, by the prosecutor's decisions and the public defender's adeptness in manipulating the Guidelines, as compared to the previous system in which the judge was almost solely responsible for the sentence. The Guidelines have entrenched existing disparities based on quality of representation even deeper into the sentencing process. The problem surfaces because a number of the offense characteristics turn on specific factual bases or assessments by the judge or the probation officer. A defendant who is not adequately equipped to present mitigating evidence or rebut the prosecutor's evidence can find his sentence quickly enhanced by factors related to the criminal conduct. The public defender is charged with ensuring that factual determinations are accurate and that any enhancements made under the Guidelines are legitimate. According to Hall:

> "Whereas disparities in the previous system of indeterminate sentencing inevitably lurked in the background, the current system of guidelines sentencing differs in two significant ways: any discretion that the judge might have exercised to check prosecutorial abuse is now legally foreclosed, and many defendants who might have chosen to plead not guilty and mount a defense under the previous indeterminate sentencing system are now likely to channel their legal resources toward mitigating the potential harshness of their punishment (1999: 1,334)."

The transformation to a determinate sentencing system was a result of the emphasis on aggregation, probabilities, and risk calculation. It was a reflection of criminal law during the twentieth century, which gradually evolved through the development and refinement of actuarial models. However, actuarial models in criminal law are comprised of basic probability assessments and straightforward statistical models. They are not highly sophisticated and, frequently, are overshadowed by political choices.

The statistical methods employed in these actuarial models narrowed in on certain key predictors of crime—specifically, on the prior criminal history of the offender. Thus, the penalty ranges of the Federal Sentencing Guidelines are designed to converge along two dimensions: offense seriousness and criminal history.

Criminal history is a powerful predictor of future criminal behavior; however, to rely solely on this predictor, to the exclusion of all other relevant variables, makes little sense. There is documented evidence on the correlations between criminality and home conditions, physical traits, genetic make-up, social interactions, and neighborhood environment. Sentencing Guidelines exclude all these factors in favor of relying solely on current offense characteristics and prior criminal history. This staunch exclusion then begs the question, "how is it, after all, that purported correlations between prior incarceration and future criminality have led us to profile prior criminal history for purposes of sentencing and law enforcement, rather than to conclude that there is a problem with prisons, punishment, or the lack of reentry programs?" (Harcourt, 2003, p. 164).

Fifth, the Sentencing Guidelines have been criticized because of their unique application approach. When an offender is convicted, all "relevant conduct" that occurred during the commission of the crime is taken into account, not just the behavior to which the offender pled guilty or was found guilty of, at trial (Tonry 1996, p. 78; 1993b). All conduct related to the offense can be used to determine the seriousness level for the sentencing grid. By allowing judges to weigh all "relevant conduct" relating to the current offense conduct, the Commission was attempting to offset prosecutorial discretion. Under the doctrine of "relevant conduct," judges are required to consider all

knowable facts, when present, regardless of whether they are charged and whether the parties have made stipulations to the contrary.

Uncharged, but relevant, conduct was upheld by the courts throughout the 1990s. For example, in *U.S. v. Quintero*, 937 F. 2nd 95 (2nd Circuit 1991), the court noted that "for all the criticism the Guidelines have attracted, one of their virtues is the illumination of practices and policies that were applicable in the pre-guidelines era, but that received less attention when sentences were only a generalized aggregation of various factors, many of which were frequently unarticulated." Recently, however, the fairness of this approach was called into question by the third circuit court of appeals in the case of *Apprendi v. New Jersey* (2000).

Apprendi v. New Jersey

One of the most controversial aspects of the Federal Sentencing Guidelines was its emphasis on consideration of all "relevant conduct" (including acquitted and uncharged conduct) when determining the appropriate sentencing range for an offense. The relevant conduct provision of the Guidelines requires a sentencing court to consider "all acts and omissions…that were part of the same course of conduct or common scheme or plan as the offense of conviction" (U.S. Sentencing Guidelines Manual §1B1.3(a), 2000, p.18). In other words, conduct for which the defendant has been acquitted, conduct for which the defendant can still be tried and sentenced in a separate criminal proceeding, and uncharged conduct all fall within the scope of what constitutes "relevant conduct." Moreover, these facts must only be proven to the judge by a preponderance of the evidence during sentencing rather than beyond a reasonable doubt at trial.

The idea of judicial fact finding at the sentencing stage of a trial had been supported by Supreme Court decisions up until this time. In June 2000, the Supreme Court departed from this trend and placed a limit on the relevant conduct provision when it ruled in *Apprendi v. New Jersey* that "any fact (other than prior conviction) that increases the maximum sentence for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt" (530 U.S. at 497 n.21). This principle has become known as the "Apprendi rule" and functions as a check on legislative discretion to define elements and sentencing factors.

The defendant, Charles Apprendi, was a man who fired several bullets at the home of an African-American family who had recently moved into his previously all-white neighborhood. Apprendi acknowledged to the police that racial bias motivated his conduct, and he asserted that he intended his attacks to send a message to the minority family. Pursuant to a plea agreement, Apprendi pled guilty to two counts of second-degree possession of a firearm for an unlawful purpose and one count of third-degree unlawful possession of an antipersonnel bomb. Under the conditions of this plea agreement, Apprendi could expect to receive a maximum sentence of twenty years. Following the evidentiary hearing, however, the trial judge found by a preponderance of the evidence that Apprendi's actions were undertaken "with a purpose to intimidate," as outlined by the hate crime statute of the state of New Jersey. At sentencing, the judge applied the sentence enhancement, thus increasing the aggregate maximum sentence length Apprendi would serve to thirty years.

Apprendi appealed the enhanced sentence based on the premise that his motive for the shooting as a racially-motivated hate crime had not been proven to a jury beyond a

reasonable doubt and thus violated his due process constitutional rights. In reversing the decision of the trial court, the Supreme Court concluded that the New Jersey hate crime statute was unconstitutional because it permitted a judge to impose a penalty based upon a finding of fact by a preponderance of the evidence, when in fact it should have been based on a finding of fact beyond a reasonable doubt by a jury. The New Jersey law was struck down by the Court because it violated a criminal defendant's Fourteenth Amendment right to due process and Sixth Amendment rights of notice and trial by jury.

The Supreme Court's decision in Apprendi was decided by a 5-4 margin. The four dissenting opinions contended that, despite their references to common law tradition, the Court has long recognized that not every fact bearing on a defendant's punishment need be charged in an indictment or proven to a jury beyond a reasonable doubt. They also provided the first warning of its consequences on the determinate sentencing practices adopted by the criminal justice systems in many states and the federal government. In previous decisions, the Supreme Court had supported the determination of legislatures in defining the elements of a criminal offense. In fact, Justices Breyer and Rehnquist argued in their dissent that "procedural compromises" are vital to the functionality of the courts in the criminal justice system, and contended that there are far too many factors relevant to sentencing to permit, as a practical matter, submission of all or even most of them to a jury.

The "Apprendi rule" requires that the particular elements of the alleged crime that will impact the amount of penalty at sentencing be included in the indictment and tried to the jury. Interestingly, the Court explicitly stated that the Federal Guidelines were not at issue under the Apprendi ruling and declined to outline how the rule would affect the

procedures required when determining how to apply Guidelines sentencing factors. *Apprendi v. New Jersey* was a state case; therefore its impact on Federal Sentencing Guidelines must be inferred. One such inference would be that the Apprendi rule would require jury determination of all facts that raise the applicable Guidelines range. Another inference could be that any facts that would affect or determine the penalty range under the Federal Sentencing Guidelines would also fall under the determination of a jury.

There are two key points upon which rests predicting the amount of impact the Apprendi rule would have on the Federal Sentencing Guidelines. First, the Court will have to decide whether the Guidelines sentencing factors and statutory sentencing factors are ultimately distinguishable. Some would argue they are not. Second, the Court will have to distinguish judicial fact-finding at sentencing with judicial discretion when imposing a sentence. Both involve a judge's exercise of authority, but only the latter affords a judge the flexibility to select a just punishment. Judicial fact-finding is directed by the Guidelines, with a prescribed impact on a defendant's sentencing range for each fact found. Thus, it should deserve the full protection of the Constitution.

Any increase in the applicable Guideline range constitutes an increase in the maximum penalty an offender can receive under the Sentencing Guidelines. The relevant conduct provision permits an increase in the available maximum penalty based on facts not tried to a jury and not proven beyond a reasonable doubt. It therefore clearly conflicts with the principle announced in Apprendi. Sentencing courts are still free to consider conduct not determined by a jury when imposing judgment so long as they stay within the prescribed statutory range (Russell, 2001).

Within two years of the Apprendi decision, over 3,500 federal and state decisions have cited Apprendi, and the Supreme Court has vacated and remanded more than fifty cases based on the Apprendi rule. The effects of the Apprendi rule will have a particular impact on narcotics cases, where the quantity of the drug is directly correlated to the penalty range of the Sentencing Guidelines. Thus, the government must charge drug quantity and prove it beyond a reasonable doubt, or the defendant must allocute to quantity at a guilty plea hearing before sentencing (Levine, 2002).

The Apprendi decision has caused a stir within both legal academic circles and criminal justice practitioner circles. In addition to numerous articles, there have also been two major symposia devoted to examining the impact of the Apprendi rule (see Symposium: Reflections on the Consequences of *Apprendi v. New Jersey* 37 Criminal Law Bulletin 552, 2001; Apprendi Symposium 38 American Criminal Law Review 241, 2001). The Supreme Court itself has attempted to clarify its ruling, but in doing so, they have taken a "zig-zag" approach (Berman, 2002, p. 75). For example, in *Harris v. United States* (122 S. Ct. 2406, 2002), the Court restricted the reach of Apprendi by holding that facts which increase applicable mandatory minimum penalties can still be treated as sentencing factors and do not require jury findings beyond a reasonable doubt. In other words, the Harris majority declined to extend the same constitutional protections to facts that increase the statutory *minimum* sentence as the Apprendi Court extended to facts that increase the statutory *maximum* sentence. But, on the same day, in *Ring v. Arizona* (122 S. Ct. 2428, 2002), the reach of Apprendi was expanded when the Court held that facts which establish eligibility for the death penalty must be treated as elements of the criminal conduct and thus require submission to a jury beyond a reasonable doubt. Thus,

rather than clarify the Apprendi rule, subsequent decisions that reference it appear to merely raise a whole host of new issues.

Speculation on the impact of Apprendi on the Federal Sentencing Guidelines has varied on a scale from little impact to sounding the death knell signaling the end of the era of Guidelines sentencing (Levine, 2002). Within the two extremes of Apprendi having no impact on the Guidelines and Apprendi wholly invalidating the Guidelines, many possibilities exist. In applying the Apprendi rule to the Sentencing Guidelines, the jury and not the judge must now find facts that would increase the penalty range of sentence length in which the judge must sentence the defendant. Thus, whenever a sentencing factor exposes a defendant to a heightened punishment range, this factor triggers a defendant's constitutional rights to due process, notice, and trial by jury. The burden is on the government to include all aggravating sentencing factors in the charges at trial and prove them to the jury beyond a reasonable doubt.

The Current Status of the Federal Sentencing Guidelines

In the years following the Apprendi decision, the Commission had the opportunity to reframe the Guidelines in order to secure them against further legal assaults surrounding the application of relevant conduct rules. Instead, the Commission downplayed the importance of the Apprendi rule and chose to maintain the status quo, squandering their opportunity to clarify appropriate application procedures. The window of opportunity closed at the beginning of 2005.

In two separate but related cases (*United States v. Booker* and *United States v. Fanfan*), on January 12, 2005, the Supreme Court of the United States ruled that the Federal Sentencing Guidelines must be considered "advisory" in order to comply with the

Sixth Amendment right to a trial by jury. These two cases involved men convicted on federal drug charges in Wisconsin and Maine, respectively. In both cases, the federal district court judges imposed greater sentences under the Guidelines based on the determination of a fact at sentencing that was not found by the jury or admitted by the defendant.

From this point forward, federal judges are no longer compelled to follow the Guidelines. In both cases, the Supreme Court found that presumptive Guidelines which require judges to make findings of fact in addition to the facts found by the jury or admitted by the defendant are unconstitutional. The relevant conduct portion of the Guidelines prescribed that these factual findings be used as part of the basis for the sentence imposed, and this aspect makes them unconstitutional. Moreover, both the defendant and the government will be able to appeal a sentence handed down by a federal district court, but the standard of review will be the reasonableness of the sentence rather than whether the sentence comports with the Guidelines.

In announcing its rulings, the Supreme Court determined that the remedy to bring the Federal Sentencing Guidelines in line with the Constitution is to excise two sections of the statutes that comprise the Guidelines scheme; namely 18 U.S.C. § 3553(b)(1) (the provision that makes the Guidelines mandatory), and 18 U.S.C. § 3742(e) (the provision that provides the standards for appellate review of a sentence, and includes that the sentence must represent a correct application of the Guidelines). In effect, the Court's holdings mean that judges must consider the Guidelines (among other factors) in formulating a sentence, but they are no longer bound to abide by their direction. The Court did not adopt the proposed remedy whereby sentencing enhancements would be

included in the indictment and decided by a jury pursuant to a proof beyond a reasonable doubt standard. However, it is implied in the ruling that this is the direction toward which the Court is pointing. The ultimate effect of these decisions on federal sentencing will only become clear after the courts have utilized the new rules for some time.

The decisions that have negated the presumptive nature of the Sentencing Guidelines appear to signal the beginning of a slight shift away from the crime control model for the federal criminal justice system, the philosophy that drove the passage of the Sentencing Reform Act. A vast amount of rigorous and highly scientific research conducted during the last two decades has proven that rehabilitation programs can be effective when offenders are matched with appropriate programs. The idea of "locking them up and throwing away the key" has only resulted in a record number of individuals under the jurisdiction of the criminal justice system. Recognition among the judicial and legislative branches of government that this trend is resulting in diminishing returns as more and more offenders with less serious criminal histories are being incarcerated for longer periods of time is definitely overdue.

At the same time, it is highly likely that the U.S. Congress will adjust the federal criminal code statutes to bring them into conformity with the constitutionality requirements set out by the Supreme Court rulings in the cases of *United States v. Booker* and *United States v. Fanfan*. Once these changes are addressed, it would then allow the Sentencing Guidelines to return to their presumptive status. If the Sentencing Guidelines become presumptive again, it is imperative that the decision to do so rests solidly on a foundation of a thorough knowledge of the effects of Sentencing Guidelines on sentencing outcomes in the federal system. The current study of sentencing outcomes

under the Sentencing Guidelines from fiscal years 1993 through 2003 will provide lawmakers with the resources they need to make an informed decision regarding the usefulness of presumptive Guidelines based on findings using scientific standards of significance and rigorous research methods. In this manner, the ability of Sentencing Guidelines to reduce unwarranted disparity in sentencing outcomes across judicial districts and over time due to extralegal factors such as race, ethnicity, and gender will be known and measurable rather than being based on assumptions derived from samples limited in both size and scope.

CHAPTER III. PRIOR SENTENCING RESEARCH

Literature Review of Sentencing Guidelines Studies

The literature has accumulated at a somewhat sluggish pace concerning the actual performance of the Federal Sentencing Guidelines, in part owing to the difficulty in examining differences in sentencing outcomes before and after their implementation. Some have attempted to measure the differences (Anderson et. al., 1999; Griffin and Wooldredge, 2006; McDonald and Carlson, 1993; LaCasse and Payne, 1999). Also, the cumbersome size of the Commission's databases may detract from scientific inquiry, which is often dictated by fiscal, temporal, and other manageability constraints. A good portion of the research conducted thus far has been done by individuals with first-hand Commission experience or with personal knowledge of the Commission and accessibility to its personnel.

Studies of the Federal Sentencing Guidelines have used numerous research designs and methodologies to analyze the data gathered each year by the Commission. One of the main purposes of the Guidelines was to make the effects of extra-legal variables negligible. Therefore, the primary purpose underlying the research has been to measure the amount of disparity attributable to extralegal characteristics. This has been done by analyzing the in/out decision, the length of term decision, the decision to depart outside of the Guidelines, or a combination of these three sanctioning decisions. While no one has tried to assert that the Sentencing Guidelines have been able to erase the effects of extralegal variables, the debate has ensued about the extent to which they have managed to exclude them (Albonetti, 1991). Overall, findings from these studies show that sentencing disparity among judges has declined since the implementation of

Sentencing Guidelines. However, it has not disappeared altogether (Anderson et al., 1999).

Approximately one-half of the states have transformed their criminal justice systems from indeterminate systems into some form of presumptive or determinate sentencing system. The sentencing guidelines developed at the state level vary in philosophy, purpose, and scope. A great deal of research on sentencing outcomes has been conducted at the state level to determine the success of state sentencing guidelines. As a result, literature has accrued that discusses what sentencing guidelines can do, what a commission should do, the effects of guidelines on courts and different types of defendants, and the advantages and disadvantages of changing to a guidelines system.

The majority of research has been conducted using sentencing data from three states—Minnesota, Washington, and Pennsylvania. In 1978, Minnesota was the first state to establish a Guidelines Commission. The state subsequently adopted sentencing guidelines on May 1, 1980. Under the Minnesota guidelines system, the predominant factor influencing the appropriate sanction involves the severity of the current offense and, to a lesser extent, the person's criminal history (Moore and Miethe, 1986; Koons-Witt, 2002). Much of the research surrounding the Minnesota sentencing guidelines has focused on the impact on jail incarceration rates (D'Allessio and Stolzenberg, 1995; Moody and Marvell, 1996; Stolzenberg and D'Allessio, 1996; Land and McCleary, 1996), the abolishment of parole (Marvell and Moody, 1996), and the impact of incarceration rates on certain crimes such as homicide (Marvell and Moody, 1998).

The state of Washington's Sentencing Reform Act of 1981 created a determinate system with presumptive guidelines for the sentencing of adult felons. The legislature's

reasoning for punishment under the guidelines and their requirement that sentences be based principally on the offense seriousness level and the offender's criminal history score was similar to the system established in Minnesota. In the state of Washington, all superior courts are required by law to submit copies of all sentencing documents for felony convictions to the Washington State Sentencing Guidelines Commission who collects, monitors, and analyzes the data for research purposes. This data is considered to be among the most complete and reliable among the states with sentencing guidelines systems. Research has been conducted with this state's data to determine the influence of legal and extralegal characteristics such as race and ethnicity and gender characteristics on departure decisions (Engen et al., 2003), as well as for predicting sentencing decisions and outcomes (Engen and Gainey, 2000).

In 1982, the state of Pennsylvania enacted a sentencing guidelines system. Similar to other states, these guidelines are also based on categories of offense severity and prior criminal record. However, Pennsylvania's system is much less restricted in that it still permits significant judicial discretion. Thus, there is considerable variation in sentences imposed across the 67 counties and 60 judicial districts in the state. Much of the research surrounding the Pennsylvania state sentencing guidelines has focused on the incarceration decision (Kramer and Steffensmeier, 1993; Steffensmeier et al., 1993; 1995; 1998), the context of the court communities on sentencing outcomes (Ulmer and Kramer, 1996; Ulmer and Johnson, 2004; Ulmer and Kramer, 1998), the social context of punishment decisions (Britt, 2000), and departures and the influence of extralegal characteristics (Johnson, 2003; 2005; Kramer and Ulmer, 2002).

The fact that researchers who utilize state sentencing data are asking the same questions as researchers who study the federal system's sentencing data is no coincidence. The same questions apply to both federal and state criminal justice systems. They both want to achieve the same end through their reforms—the reduction of unwarranted sentencing disparity. Therefore, it is important to include a review of state-level sentencing data in order to glean important methodological considerations and compare previous findings to paint a complete picture of the research surrounding sentencing guidelines. It is not necessary to reinvent the wheel with federal level data simply because, up until now, it has only been done with state level data. Before doing so, however, the U.S. Sentencing Commission's own recent evaluation will be reviewed for comparison purposes.

The U.S. Sentencing Commission's 15-Year Review

In November 2004, the U.S. Sentencing Commission released a report to the public as part of its congressionally mandated 15-year review of federal sentencing practice. This report was a follow-up to the first report submitted to Congress in 1991, evaluating and summarizing the first four years of federal sentencing under the new determinate system. As stated in the subtitle of the 2004 report, the Commission attempted to assess the extent to which the federal criminal justice system is achieving the goals of reform that were outlined in the Sentencing Reform Act of 1984. These goals were: to reduce disparity, to assure certainty and severity of punishment, and to increase the rationality and transparency of punishment. The Commission's 2004 report was based on a review of sentencing practices for six offense types—drug trafficking, economic crimes, immigration crimes, offenses involving firearms trafficking and

possession, violent crimes, and sexual offenses. These offense type categories have comprised the majority of the caseload in federal criminal courts.

The Commission's report also summarized findings from a survey of federal judges. Approximately one-half of federal district court judges and about one-third of circuit court judges filled out and returned the questionnaire. While the Commission claims to be committed to an open dialogue with the federal judiciary, the survey response rate appears to be somewhat discouraging. Demonstrating how the survey results are congruent with the general opinion of the entire judicial conference when such a large proportion of judges failed to respond to the Commission's request to participate in the survey may prove to be problematic.

Both the incarceration rate and the average prison sentence length increased across all six offense types evaluated in the Commission's 15-year report. Following the passage of the Anti-Drug Abuse Act of 1986, the Guidelines drug quantity tables were adjusted to match the severity of the penalty to the quantity of the drug, resulting in a dramatic increase in the time served by convicted drug offenders in the federal criminal justice system. This trend is visible for all types of drugs, although the proportions are substantially higher for crack cocaine and then followed by powder cocaine, ######, and other scheduled narcotics. The penalties associated with methamphetamine have also been raised in the last few years to be on par with that of ######.

Economic offenses constitute the second largest group of federal crimes being sentenced in the federal criminal court system. The offenses in this category, commonly called "white collar" crimes, include offenses such as fraud, larceny, embezzlement, and tax evasion, and have historically received less severe sentences. Under the Guidelines,

this trend has shifted away from sentences of probation toward more intermediate sentences that often include some type of confinement. Similar to the drug quantity tables, loss tables in the Guidelines connect the monetary amount of loss to determine the severity of the corresponding penalty.

The number of offenders being sentenced for immigration offenses has surged since the mid 1990s. The two most common types of immigration crimes are alien smuggling and illegal entry. After Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, revisions to the Guidelines placed most defendants convicted of immigration offenses deeper into the zones of the sentencing table where alternative sentences are no longer available. As a result, the use of incarceration has increased substantially for immigration offenses.

Offenses which involved the possession, use, and trafficking of firearms in conjunction with a drug trafficking or other violent crime have also been given mandatory minimum penalties. Corresponding amendments to the Guidelines have resulted in a 100 percent increase of prison term lengths compared to average prison sentences for firearms offenses before the enactment of the Guidelines. The Commission's own policy changes have been the most significant factor driving the increases in firearms offense penalties to double their pre-Guidelines figures.

Violent crimes such as murder, manslaughter, assault, kidnapping, robbery, and arson constitute a very small proportion of federal offenses. The most common offense in this category is bank robbery. While average prison sentences have not increased for these types of crimes under the Guidelines like the other crime categories, the elimination

of parole has increased the overall time served for violent crime to substantially higher levels.

The last crime type evaluated by the Commission in its 15-year review was sex offenses, which include offenses such as criminal sexual abuse, exploitation, and promotion of illegal sex acts. Similar to violent crimes, these offenses constitute a very small proportion of cases in the federal criminal justice system. Congress has passed a large amount of legislation regarding these types of crimes, and the Commission has responded with amendments and increased penalties for defendants convicted of sex offenses. These changes have resulted in longer sentences for these types of crimes, particularly offenses involving minors.

According to the Commission's report, racial disparity in average sentence length continues to persist because of mandatory minimum penalties associated with convictions for drug offenses. The importance of drug quantity has taken precedence over all other offense characteristics in determining the final offense level. Besides the amount of drugs confiscated by law enforcement authorities and submitted for evidence, the aggregate drug amount involved in the drug trafficking and/or distribution organization over a long period of time is fairly uncertain. In these circumstances, drug quantity is frequently estimated from accounts by less-than-reliable sources. The offense conduct narratives contained in the Pre-sentence Investigation Report often rely on potentially untrustworthy factors such as confidential informants and the testimony of co-conspirators who have traded testimony for promises of lenient treatment. Nearly one-third (31%) of the district judges who participated in the Commission's survey pointed to sentencing for drug offenses as the foremost or second greatest challenge in achieving the

purposes of a fair and just sentence. The majority of judges felt that sentence lengths for drug offenses were excessively harsh in proportion to the seriousness of the crime.

The Commission's report finds that some disparity still exists under the Guidelines. Disparity persists both between individual judges and between districts. Departures outside of the Guidelines are the primary mechanism for residual disparity. The Commission's evaluation found racial, ethnic, and gender disparity in average sentence length, likelihood of imprisonment, caseload, within range sentencing, and intermediate sentencing options. Thus, while the Commission claims to have met the goals of increased rationality and transparency in sentencing and increased certainty and severity in punishment, goals of reducing unwarranted disparity and achieving a high level of uniformity in sentencing have only been partially achieved.

Interestingly, the Commission's report notes that the number of cases on the federal criminal court docket has grown every year since the enactment of the Guidelines while the national crime rate has simultaneously decreased. The Commission's report states that, "the federal criminal justice system simply is handling an increasing proportion of a decreasing number of criminals in the United States and imposing increasingly severe penalties upon them" (p. 76). This trend to incarcerate more low-level offenders for longer periods of time has resulted in more individuals under the jurisdiction of the criminal justice system than in any previous era, or compared to the proportion of any other nation in the world. Certainly, other changes such as the passage of truth-in-sentencing laws and mandatory minimum penalties have also contributed to this increase. The Sentencing Guidelines are just one more reform of the crime control movement that has played a role in this incarceration trend.

The Commission's report concludes that the Sentencing Guidelines are capable of controlling and changing sentencing practices. Guidelines are also preferable to codified statutes since they take into account many factors and offense characteristics not identified in the formal legal code. Finally, the Commission asserts that Guidelines are much better suited to sentencing than mandatory minimum penalties passed by Congress because they allow for more precisely targeted policymaking.

Research on Sentencing Guidelines and Disparities in Sentencing Outcomes

For more than 40 years now, research has attempted to determine the exact effects of race and ethnicity on sentencing, even whether an effect exists (Chiricos and Crawford, 1995; Spohn, 2000; Zatz, 1987; 2000). Racial disparity in sentences for drug offenders has increased dramatically since the Federal Guidelines were promulgated. Racial minorities have been disproportionately affected, and research has uncovered significant variation in federal sentencing outcomes for drug offenses that legally relevant factors do not explain (Albonetti, 1997; Schulhofer, 1992; Steffensmeier and DeMuth, 2000).

Debate over racial and ethnic bias has continued, even as sentencing structures have changed from indeterminate to determinate systems. Notwithstanding these reforms, opportunities for more subtle forms of discrimination still exist and continue to influence sentencing outcomes (Everett and Nienstedt, 1999). Even formal Sentencing Guidelines such as those promulgated in the federal system still leave ample room for individualized sentencing and persistent disparity (Zatz, 1984; Miethe & Moore, 1985; Paternoster & Bynum, 1982).

Today, there is a large amount of literature surrounding racial bias in sentencing. At the same time, much variation exists in the quality of the research designs. It deems merit, therefore, to examine the methodologies used to support research findings in this area. Some have argued that the high incarceration rate of blacks is due to discrimination in the criminal justice system. Others have suggested that blacks are more frequently involved in serious and violent offenses. Overall, initial studies in this area lacked quality research designs in three important areas, namely selection of single points of study within the criminal justice system, the number of jurisdictions in the studies, and the level of aggregation of those jurisdictions used to study racial disparities (Crutchfield, Bridges, & Pritchford, 1994). Nor can one overlook the fact that there is a great deal of variation throughout the United States in racial patterns of imprisonment, and that these variations probably account for much of the diversity of results that have been reported.

Of course, every step in the criminal justice process, from the enactment of specific criminal statutes to the arrest decision or prosecutorial charging practices to the charging of relevant conduct should be explored as influential in federal sentencing outcomes (McDonald and Carlson, 1993). The problem of "cumulative disadvantage" is still considered relevant (Zatz, 1987). A partial explanation of the increased racial disparity can be traced back to the reemergence of mandatory minimums (Nagel & Schulhofer, 1992; Schulhofer, 1992; Tonry, 1993; USSC, 1991; 2004). Federal penalties for drug offenses demand the same mandatory sentence for one gram of crack cocaine as for those involving one hundred grams of powder cocaine. This difference, whether it was done purposefully or unintentionally, resulted in the vilification and targeting of the black population—particularly young black men (Tonry, 1995; Bush-Baskette, 2000).

Differences stemming from cultural backgrounds and language barriers have negatively influenced the dispositional outcomes of Hispanic and Native American defendants relative to white defendants convicted of similar crimes (Zatz, 1984; 1985; 1987; 2000; Bynum, 1984). Hispanics frequently receive harsher sanctions for certain crimes such as those involving drugs owing to similar stereotypical attributes (Zatz, 1984; LaFree, 1985). Also, black defendants are repeatedly perceived as more dangerous, less amenable to treatment, and less committed to the values held by conventional society (Zatz, 1985; Kramer and Steffensmeier, 1993; Steffensmeier et al., 1998; Bridges and Steen, 1998).

Recent research findings have demonstrated that the role played by racial and ethnic factors in sentencing outcomes is very likely part of a larger interaction effect. In other words, racial and ethnic effects may be conditional on other defendant characteristics such as gender, age, criminal history, or offense type (e.g. drug offenses) (Spohn and Holleran, 2000; Steffensmeier and DeMuth, 2000; 2001; Steffensmeier et al., 1998). This interaction effect appears to contribute the most stringent effects on sentences of convicted young minority males. Moreover, these interaction effects do not apply uniquely to violent or "street" crimes. In her examination of white collar case dispositions, Albonetti (1998) found that it was important to measure both direct and indirect effects of such variables as guilty pleas, race, gender, and other offender and offense characteristics in determining their combined effects on judicial discretion at sentencing.

Studies of sentencing guidelines have regularly focused on two discretionary decisions faced by the courts at sentencing to shed light on unwarranted disparity due to

extralegal factors. The first sentencing decision is whether or not to incarcerate the convicted offender. This decision is commonly called the "in/out" decision. The second sentencing decision regards determining the length of the prison term for those offenders who receive a sentence of incarceration. This decision is referred to as the "length-of-term" decision. In order to characterize the disparity that can arise from the influence of extralegal factors on these two decision points, a comprehensive review of sentencing outcome studies in several states as well as the federal system was undertaken. A detailed summary of this research literature follows.

Studies of State Sentencing Guidelines

One of the earliest studies of racial disparity under sentencing guidelines was performed by Kramer and Steffensmeier (1993), who examined Pennsylvania guidelines sentencing data and found that race had a small effect on judicial decision-making on the in/out decision, but a negligible effect on the length-of-term decision. In later studies, Steffensmeier and colleagues (1998) discovered that interactive models, which considered the joint effects of race, gender, and age on sentencing outcomes, were far more useful than additive models when measuring their influence on the final sentencing outcome (see also the additive model tested by Spohn and Holleran, 2000). Together, these studies demonstrate that factors such as gender, race and ethnicity, and age can affect sentencing outcomes both independently and in combination with one another (Steffensmeier et al., 1995; Johnson, 2003).

Ulmer and Kramer (1996) examined differences in sentencing outcomes in three Pennsylvania counties to measure the effects of extralegal characteristics such as race and gender. They constructed a theory built upon the work of Albonetti (1991), who

observed that judges are often forced to make predictions about offenders' future behavior based upon information that is often shallow and inadequate. Their results suggested that judges rely on extralegal factors to buttress the legal factors and thereby reduce the uncertainty of the decision-making process. More recently, Steffensmeier and DeMuth (2001) analyzed sentencing outcomes for black, white, and Hispanic defendants in Pennsylvania and found that white defendants were more likely to receive lenient treatment and Hispanic defendants were more likely to receive the most severe penalties. These results were constant for both the in/out decision and the length-of-term decision. Whether the crime of conviction was drug-related or not did not affect the significance of the racial and ethnic disparities.

Engen and Gainey (2000) used felony sentencing data from Washington State to present an alternative model which specifies the effects of offense severity and criminal history better than past research. They found that when they controlled for the presumptive sentence, the effects of extralegal factors such as race and gender were considerably reduced. Ulmer (2000) cautions, however, that the model depends on the type of data and demonstrated that what was appropriate for studying sentencing outcomes in Washington State was not the best option for studying Pennsylvania sentencing outcomes. This exchange points out the importance of controlling for the presumptive sentence so that the influence of other factors that condition the sentencing outcome can be measured with greater accuracy.

Racial typification of violent crime has been found to be a significant predictor of support for more punitive punishments such as the call for more arrests, more funding for police and other security measures, and expanded use of longer terms of incarceration

and other punitive social control mechanisms (Chiricos et al., 2004). The effects of racial disparity on severity of punishment have been shown to vary at the individual court level (Britt, 2000). In addition, other factors such as court size, local jail capacity, court caseload pressure, and percent minority in the surrounding community can interact with race and ethnicity to affect the likelihood of incarceration (Ulmer and Johnson, 2004). According to Ulmer and Johnson (2004, p. 169), "viewing courts as distinctive communities, and viewing focal concerns of sentencing as embedded within and shaped by court communities, could also connect theories of criminal punishment to broader sociological concerns in stratification and organizational sociology."

Indeed, demographic and social factors such as racial composition of the population, crime rates, and citizen ideology have been correlated with a much greater influence on the increase in state incarceration rates than formal criminal justice policies such as determinate sentencing, mandatory minimum sentences, and truth-in-sentencing laws (Sorensen and Stemen, 2002). The number and complexity of possible factors affecting crime rates make it extremely difficult to isolate a single law and test its effectiveness, especially if its contribution to crime reduction is relatively small (Hofer, 2000). The relationship between broader societal factors such as racial heterogeneity in the population, age structure of the population, levels of urbanization, industrialization and economic development, and poverty and unemployment rates should also be considered relevant (Sorensen and Stemen, 2002).

Research on presumptive sentencing guidelines has demonstrated a correlation with prison population growth primarily when such guidelines are sensitive to prison capacity or whenever the corresponding legislature was charged with the obligation to

consider prison capacity when establishing presumptive sentencing ranges (Marvell, 1995). Controlling prison growth has thus become a secondary function of some state's sentencing guidelines systems. At the same time, studies of numerous states' guidelines systems have failed to find any association with lower overall state crime rates (Lee, 2001).

Together, these studies provide a persuasive argument for the influence of extralegal characteristics on both the decision to incarcerate and the length-of-term decision. The magnitude of the evidence suggests sentencing outcomes in state courts continue to result in unwarranted disparity even after the introduction of sentencing guidelines. These disparities are associated with extralegal characteristics of the defendant such as race and ethnicity as well as court and community characteristics.

Studies of the U.S. Sentencing Guidelines

Significant racial and ethnic differences on the decision to incarcerate and the length-of-term decision have likewise been found using federal sentencing data. Steffensmeier and DeMuth (2000) uncovered significant differences in outcomes using sentencing data from the U.S. federal courts from 1993 to 1996. Unfortunately, they limited their analysis to male defendants and U.S. citizens. The sentencing outcomes for both blacks and Hispanics were significantly harsher than white defendants.

In addition to racial and ethnic disparity, other demographic traits and personal circumstances have been shown to exercise a negative influence on case outcomes for some offenders. These include gender, socioeconomic status, family status, education levels, income levels, and citizenship (Kempf-Leonard and Sample, 2001; Mustard, 2001; Smith and Damphousse, 1998; Albonetti, 1997). The conclusions reached by these

studies suggest that the original objectives of uniformity, consistency, and equity have not been fully accomplished by the promulgation of presumptive Sentencing Guidelines in the federal system.

The sentencing outcomes of defendants convicted of drug offenses have received the largest amount of attention in research studies (Hebert, 1997; Bush-Baskette, 2000; Semisch, 2000; Kautt and Spohn, 2002). The Guidelines prescribe vastly different sentences depending on the type and amount of drug used in the offense conduct. However, even after controlling for factors such as type and amount of drug, minority offenders received harsher sanctions than white offenders for similar drug offenses (Hebert, 1997). Minorities were more likely to be both imprisoned and received longer prison sentences than white defendants for similar drug crimes. A large portion of the discrepancy was due to white defendants whose final offense level was lowered because of their acceptance of responsibility. Results such as these suggest that federal judges sentence minority offenders, at least in part, on historically constructed and actively maintained stereotypes regarding race or ethnicity and drug use.

Nevertheless, across offense types, blacks and males have been found to be less likely to receive no prison terms when that option was available, and less likely to receive downward departures (Mustard, 2001). In particular, sentencing outcomes involving the use of mandatory minimum sentences are significantly conditioned by racial factors (Kautt and Spohn, 2002). Overall, a defendant's race has demonstrated strong influence over the sentencing outcome whether they qualified for and received a mandatory minimum sentence, or they qualified for but did not receive a mandatory minimum sentence, or they did not fall within the statutory purview of a mandatory minimum

sentence. While influential for black and Hispanic defendants, these findings have not been shown to extend to Asian defendants for either the in/out decision or the length-of-term decision (Chanhatasilpa, 2000). Thus, the Sentencing Guidelines have been successful in inhibiting racial discrimination against Asian defendants.

In summary, similar to the findings at the state court level, studies of the Sentencing Guidelines in the federal system have found significant differences for black and Hispanic minority offenders for both the in/out decision and the length-of-term decision. These studies have also attempted to measure the influence of additional offender characteristics when available. However, no study has examined sentencing outcomes over time, and the data on court characteristics are limited to location in terms of district and circuit court boundaries. In combination with extralegal factors, geographic location can create differences between courts in numerous ways, including dismissal rates, sentencing outcomes, mode of disposition, likelihood of incarceration, and length of sentence (Kautt, 2002; Johnson and Songer, 2002).

Gender Disparity and Sentencing Guidelines

Studies of sentencing outcomes in both state and federal criminal justice systems have uncovered gender disparities. Significant differences in sentencing outcomes between male and female defendants convicted of similar crimes have been noted (Daly, 1994; Albonetti, 1998; Daly and Tonry, 1997; Hanbury, 2000; Jeffries et al., 2003; Koons-Witt, 2002; Semisch, 2000; Mustard, 2001; Nagel and Johnson, 1994; Steffensmeier et al., 1993; 1998). Steffensmeier and colleagues (1993) collected studies during the previous three decades to compile a comprehensive summary on the gender differences in imprisonment decisions and sentence length as well as enumerate the

shortcomings of certain studies, such as inadequate controls for offense seriousness and prior record.

Gender influences sentencing practices, both by itself and in combination with other factors such as race, marital and employment status, pregnancy and motherhood, and offense type (Koons-Witt, 2002). Studies on sentencing guidelines have shown that gender is influential in sentencing offenders to prison (Griswold, 1987; Steffensmeier et al., 1993; Ulmer and Kramer, 1996), in determining reasons for departures from the recommended sentence (Kramer and Ulmer, 1996; Steffensmeier et al., 1993), and in deciding sentence length (Albonetti, 1997).

Nor is the phenomenon of gender disparity unique to the United States. Jeffries and colleagues (2003) found that women were treated more leniently than men over a seven-year period in New Zealand. This finding applied to both the in/out decision and the length of term decision. Results such as these can be attributed to one of two reasons. First, women often tend to play minor roles in crime and to have less serious criminal histories (Daly, 1994: Chesney-Lind, 1997; 1989). Second, decisions that result in gender disparities early in the decision making process will likewise contribute to gender disparities at the end of the judicial decision making process (Daly and Chesney-Lind, 1988). For example, pre-trial release decisions have been shown to affect differences in sentencing outcomes (DeMuth, 2003).

The fundamental question about what constitutes justice for women is at the core of the debate over equal versus different treatment of women in the legal system. In the area of sentencing reform, however, the equal treatment of women has translated into an increased reliance on incarceration as a sanction. Sentencing guidelines were designed to

exclude the influence of gender, and thus resulted in the diminished relevance of factors that were considered to be of significant consequence previous to the change in sentencing laws. Critics of sentencing reforms argue that women have been disproportionately affected by the use of guidelines (Chesney-Lind and Pollock, 1995; Nagel and Johnson, 1994; Raeder, 1993).

The chivalry and paternalism perspectives assume that women in general are protected by the criminal justice system and are sentenced more leniently when compared with men (Daly and Bordt, 1995; Raeder, 1993; Mustard, 2001). Women who fulfill traditional gender expectations by acting in a feminine, docile, and subordinate manner tend to experience lenient treatment compared with women who do not fulfill these traditional roles. The presence of children and marital status contributes to the disparity. For example, Daly (1987; 1989; 1994) finds that 'familied' defendants are treated more leniently than their non-familied counterparts.

Criminological theory has struggled to explain criminal offending behaviors of women. Mainstream theory has run up against two obstacles—the generalizability problem and the gender ration problem—in trying to address the motivations and reasons for criminal behavior in women. Sanctioning theory has run into similar problems in trying to deter and prevent future criminal offending among women. The differing life circumstances of male and female offenders frequently results in different sanctions, even within a guidelines system.

The question of addressing unwarranted disparity in sentencing reform has consistently been viewed through the perspective of the male offender. By framing men in the context of the usual or "normal" offender, women are then viewed as exceptions.

Feminist scholars have challenged this conceptualization. Daly (1994) has outlined three different options on which to base sentencing reform. First, treat men more like women. Second, treat women more like men. Third, split the difference. However, proposed sentencing policies that relied on a female standard were viewed as too lenient. The unintended and undesirable effect of this transition using a male standard was an increase in the likelihood of incarceration for women, including nonviolent offenders. This phenomenon was particularly striking among black minority women convicted of drug offenses involving crack cocaine (Bush-Baskette, 2000)

A number of studies have been conducted to measure the reduction in gender disparity after the implementation of sentencing guidelines (Albonetti, 1997; Griswold, 1987; Knapp, 1984; Kramer and Ulmer, 1996; Moore and Miethe, 1986; Steffensmeier et al., 1993; Steffensmeier et al., 1998). It was assumed that a shift from a rehabilitative indeterminate sentencing system focused on the individual offender to a system emphasizing the type and seriousness of the offense would result in equal treatment. Yet, research showed that courts adjust over time to compensate for reforms and protect their sense of justice (Koons-Witt, 2002).

Previous studies have uncovered statistically significant differences between the sentences imposed on men and women defendants using the Federal Sentencing Guidelines (Nagel and Johnson, 1994; Newton, Glazer, and Blackwell, 1995; Mustard, 2001). These differences might best be explained by distinguishing "gender-related" sentencing disparity from "gender-based" sentencing disparity (Kesler, 2003, p. 192). Women offenders commit primarily non-violent offenses, go to trial less frequently than men offenders, and are more likely to be assigned to the lowest criminal history category

than men. Thus, "gender-related" factors such as role in the offense and criminal history may help explain, and possibly justify, sentencing disparities that appear to be based on gender.

Nagel and Johnson (1994, p. 182) remind their readers that the purpose of sentencing reforms during the 1980s was "designed to substantially reduce judicial sentencing discretion, to reduce unwarranted sentencing disparities, and to reduce race, gender, and class discrimination." While there was an especially forceful push at the federal level to shift the focus from offender characteristics to offense characteristics and the offender's criminal history, the favorable treatment of female offenders has not been eliminated. Nevertheless, they propose that this apparent gender disparity is not a bad or unjust phenomenon. The desire to avoid disparities between the genders through "facially neutral Guidelines must not eclipse the principles of desert and crime control that animate sentencing policy, or the fact that lenient treatment of women in the criminal justice system may have macro-level social costs which must be weighed against any micro-level benefits to individual offenders" (p. 221).

Gender has been shown to have a small but significant effect on the likelihood of imprisonment that favored female offenders in state level studies (Steffensmeier et al., 1993; Koons-Witt, 2002). This is a common consequence of the judge's sentencing decisions being based on concerns of blameworthiness and practicality. Overall, gender effects have persisted, in large part, because of the departure mechanisms that are built into sentencing guidelines, allowing judges to exercise discretion in deciding the appropriate sentence. Such discretion allows sentencing courts to adapt or circumvent sentencing reforms to continue to assert their notions of fairness (Kramer and Ulmer,

2002). Among female offenders in particular, the presence of dependent children significantly reduced their likelihood of going to prison (Koons-Witt, 2002). These findings point to the fact that courts are not ready to ignore gender altogether and that women's special circumstances are indeed recognized and considered at sentencing.

Under the federal Sentencing Guidelines, black females convicted of offenses involving crack cocaine have not been so fortunate. Drug crimes involving crack cocaine fall under the most stringent mandatory minimum penalties contained within the Sentencing Guidelines. Since black females are more likely to be convicted of offenses involving crack cocaine than other drug types, they are also more likely to receive mandatory minimum sentences more often than offenders in other racial, ethnic, and gender demographic groups. Thus, black women convicted of drug offenses involving crack cocaine have been negatively affected in both the in/out decision and the length-of-term decision, resulting in an unprecedented increase in the proportion of black females in the federal prison population (Bush-Baskette, 2000).

Overall, the defendant's gender has been shown to exert a significant influence on the sentencing outcome in both state and federal studies. This is true for both the in/out incarceration decision and the length-of-term decision. Whether this gender-related disparity is judged to be warranted or unwarranted still has not been decided.

Judicial Departures and the Sentencing Guidelines

Under the prior indeterminate sentencing system, judges exercised a wide degree of discretion to sentence offenders. Different judges sentenced offenders differently based on their own conceptions of sanctioning theory. Consequently, it was not uncommon for personal biases and prejudices to enter into the sentencing decision (Karle

and Sager, 1991). In response to the call for reforms, a determinate sentencing system was established. The new system was constructed around Sentencing Guidelines to replace a century-old system of indeterminate sentencing in federal criminal cases.

The U.S. Sentencing Commission was charged with the creation of a system of criminal justice that would balance the desirability of a high degree of uniformity against the necessity for the exercise of discretion (Hauser, 1993). The Federal Sentencing Guidelines restrict, but do not entirely eliminate, judicial discretion. Once the final offense level and criminal history score are calculated, the sentencing court still retains the discretion to depart above or below the specified Guideline range based upon a defendant's manifest extraordinary circumstances. When a court decides to sentence a defendant outside of the prescribed penalty ranges, this is known as a departure. Inevitably, the departure decision has evoked the largest amount of controversy because it involves unchecked discretion and connotes inadequacies in the Guidelines and disparate treatment of offenders convicted of similar crimes.

Departures exist, in part, because the real-life application of the Guidelines has proven more difficult than the theoretical reasoning that drove their enactment. They occur when the court determines that the need for individualized treatment outweighs the need for equal treatment so as to warrant a departure outside the prescribed Guideline punishment ranges (Pribil, 1992). On one hand, the Guidelines exclude factors such as race, sex, national origin, creed, religion, socioeconomic status, age, educational level, vocational skills, physical condition, previous employment, and family ties as not to be considered manifest extraordinary circumstances under which a departure may be granted. On the other hand, a rigid, mechanized application which straitjackets a

sentencing court should be avoided. The question of whether judges possess sufficient discretion to address atypical cases and offset any imbalances, and the related question of whether Congress and the Commission have permitted virtually no judicial discretion remain unanswered.

As Ogletree (1988, p. 1,958) points out, "consistency produced by ignoring individual differences is a false consistency." Likewise, uniformity in sentencing relies, in large measure, upon the equally uniform charging efforts of the U.S. Attorneys. Adding to this complexity is the fact that not all similarly convicted offenders are truly similarly situated in terms of their diverse offender and complex human circumstances. The same sentence may have an inconsistent impact on two different offenders due to their differing life situations. A fifteen-year sentence would affect a 19-year-old young man differently than a 24-year-old single mother of three small children or a 63-year-old man. Critics of the Guidelines contend that this inequality in outcomes would be unjust (Tonry, 1996). To this end, fixed rules coupled with narrowly-guided, non-binding policy statements are, on occasion, insufficient and inappropriate (Bush, 1990).

A departure connotes judicial noncompliance with the Sentencing Guidelines, and this routinely invokes appellate jurisdiction by both the government and the defendant. The purpose of the appellate review mechanism is to ensure there is no abuse of discretion by the sentencing court (See *Koon v. United States*, 1996, 518 U.S. 81). At the same time, the fact that the Guidelines leave room for differing interpretations by the appellate courts, leads to the possibility of the reemergence of the very disparity that Congress originally sought to remove from the sentencing process (Ellingstad, 1992).

The Guidelines may be thought of as a framework within which a judge should typically impose a sentence. A court first determines whether an aggravating or mitigating factor is present and must then determine whether the Guidelines already account for that factor. If the Guidelines account for the factor adequately, the court may not depart from the Guidelines. If the Guidelines do not account for the factor, or "do not do so adequately," the court must then determine if the existence of the factor merits a sentence outside the recommended Guideline range (Pribil, 1992). This then begs the question, what is "adequate?"

Deciding whether departures are a signal that the sentencing Guidelines are functioning properly depends on the position from where one starts. It is not as simplistic as just taking a stand on one side or the other. In short, is a departure "good" or "bad?" It is better to begin with the fact that departures occur. Unique circumstances will arise that are not covered within the scope of even the most complex of guidelines systems. It is just plain fact that unforeseeable or infrequent circumstances will arise in future cases that are not anticipated or accounted for in the current Guidelines. Kramer and Ulmer (2002, p. 901) framed the situation succinctly when they stated that the sentencing process as "a complex, localized, interpretive process, and formally rational sentencing policies like guidelines cannot cover all possible situations." The Commission also realized this possibility and envisioned the departure mechanism as a way to receive important feedback from the courts regarding the Guideline's operation (USSC, 2003).

Sometimes departures are used to further the goals of equitable justice when the Guidelines fall short. At other times, they may be used to generate more unwarranted disparity based on discriminatory or prejudicial views. The real issue, then, appears to be

in determining whether the departure mechanism supports the aim of the Guidelines in reducing disparity more often than hindering the aims of the determinate Guidelines sentencing system. Furthermore, the reasons for some departures as warranted or unwarranted are still not resolved. For example, departing outside of the recommended sentencing ranges for women based on their gender or parental status is viewed by some as evidence of residual disparity, while other researchers view these issues as justifiable reasons for departures.

If departures are viewed solely in the context of being an asset or a liability to this type of sentencing system, their inevitable occurrence will serve to reinforce or justify the existing belief. If departures are seen as drawbacks, then any departures will automatically be judged as going against the purpose and intent of the Guidelines. The more departures occur, the greater the disparity resulting from deviation from the Guidelines. If departures are seen as a way to make the Guidelines more equitable, then the results of such departures will reinforce that viewpoint. The more departures occur, the belief that justice is being accomplished will correspondingly increase. Departures are good if one is willing to make allowances. If these allowances are categorized as disparate treatment because they deviate from the Guidelines, they will be viewed in a negative light no matter the extenuating circumstances.

Perhaps, the place to begin is in the definition of disparity itself. There are two kinds of disparity: warranted and unwarranted. Warranted disparity is the variation in sentence outcomes due to legally relevant factors, such as criminal history, crime type, and crime severity. Unwarranted disparity is the variation in sentencing outcomes that can be reasonably identified as resulting exclusively from other extra-legal factors such

as race, gender, or socioeconomic status after all legally relevant sentencing factors are taken into account (Stolzenberg and D'Alessio, 1994; Bushway and Piehl, 2001).

When the Guidelines were first promulgated, the Sentencing Commission failed to clarify the circumstances under which warranted departures are justified, thus engendering intercircuit conflict. One instance of such intercircuit conflicts occurred regarding downward departures based on extraordinary family circumstances. In the early 1990s, there was widespread, and sometimes vehement, disagreement among the circuit courts surrounding the circumstances for this departure reason. The conflict arising from this particular sentencing issue demonstrated that the Commission and by extension, the Guidelines, apparently failed to provide adequately comprehensive instructions to the courts (Wayne, 1993).

Simply put, departures are permitted, but not expected, to happen in the normal course of sentencing. In subsequent rulings, the U.S. Supreme Court placed a great deal of trust and responsibility on the Sentencing Commission as a continuing, independent body to provide guidance to the courts. The expectation was that the Sentencing Commission would take seriously its monitoring function, to amend and review the Guidelines on a regular basis. Although it operates under the judicial branch, it is not a court nor does it exercise judicial power (Jackson, 1990). Tangentially, this then begs the question, who would have the ultimate power to overrule, the Commission or the Supreme Court?

Because of the lack of clear guidance from the Commission in the beginning of the Guidelines era, the federal courts have interpreted the Commission's policy on departures on a case by case basis. In the ensuing years, they have ruled that certain

circumstances are improper justifications for a departure, including defendant's inability to speak English, alien defendant, first-time offender status, consideration of political circumstances, and defendant's affluence. Conditions which the courts have found to be non-extraordinary and therefore, not meriting a downward departure include pregnancy, Acquired Immune Deficiency Syndrome (AIDS), poor health, drug dependence, alcoholism, and participation in a post-arrest drug rehabilitation program. Examples of non-extraordinary family circumstances found not warranting a departure include the defendant's status as a single parent, efforts to keep the family together, status as a parent of several children, two minor children being separated and placed with strangers, status as parent of a handicapped child, spouse was imprisoned, unpleasant childhood and family life, and wife's affair with the victim. In 1992, the Commission amended its formal departure policy to limit departures based on lack of youthful guidance and circumstances surrounding a disadvantaged upbringing (Pribil, 1992).

The courts have ruled departures to be justifiable under certain atypical circumstances. Extraordinary circumstances have been found where: the stability of a close-knit family depended upon the defendant's presence, a child's exceptionally promising future was threatened, the family ties were unusually supportive and shielded the young defendant from gang-related influences, the defendant had extraordinary parental responsibilities, there was a lack of youthful guidance, and the community would be deprived of an exemplary citizen. Additional reasons used as grounds for departure include: conduct of the victim, lesser harms, coercion and duress, diminished capacity, voluntary disclosure of the offense, certain limited cases of co-defendant disparity, and impressive rehabilitation (Pribil, 1992).

Notwithstanding this area of case law, many judges consider themselves bound by the Commission's advice contained in their policy statements that certain offender characteristics are "not ordinarily relevant" to sentencing. In his review of sentencing decisions, Gomez (1995) found that a series of family factors which, in isolation, would not remove a case from the heartland would, when clustered together, invite increased consideration for departures. Likewise, Farabee (1998, p. 602) found that "multiple circumstances of the defendant's life were aggregated and offered as a combined reason for downward departure." Thus, the confounding boundary appears to lie in deciding how many cases are atypical and justify a departure. There is a complete absence of Commission guidance over expected quantity of occurrences for unusual or atypical cases. Is ten percent too large? Five percent? One percent? (Kramer and Ulmer, 1996).

Whenever a judge chooses to exercise discretion and depart outside of the boundaries of the Guidelines, reasons explaining the departure are entered into the case documents. Departures may be either "guided" or "unguided." Guided departures in the Guidelines assign a specific number of levels to be added or subtracted from the final sentencing range. Unguided departures are not accompanied by any Commission direction and are left entirely to the discretion of the judge (Hauser, 1993, p. 373).

Therefore, disparity may continue under a Guidelines system in three important ways. First, through the use of overly broad categories which result in similar sentences for unlike offenders. Second, through plea practices which involve bargaining for the exclusion of facts or charges that significantly alter the sentencing decision. Third, and of importance to the present study, through excessive or inappropriate departures from the Guideline's heartland. The Commission has described the offense categories in the

Guidelines as "carving out a 'heartland,' a set of typical cases embodying the conduct that each Guideline describes" (USSC, 1992, p. 45). A departure should place the defendant within the appropriate heartland, not above or below, because doing otherwise creates unwarranted disparity.

The continued practice of unwarranted departures is one of the reasons that disparities persist within a Guidelines system. In short, departures are the mechanism for circumvention of the sentencing ranges prescribed by the Guidelines and the "primary" source of unwarranted differences (Mustard, 2001, p. 285). Both warranted and unwarranted departures depend upon the same discretion exercised by federal judges. Thus, by allowing warranted departures, the possibility of unwarranted departures is almost inevitable. Warranted departures should be viewed by the Commission as signaling inadequacies in the Guidelines that need to be addressed and remedied. The Commission should have a mechanism in place to monitor instances of unwarranted departures. The Commission could then be empowered to alert the judges about unwarranted departures and hold them accountable for their decisions.

Much research has demonstrated that unwarranted departures are used in ways that can disadvantage minority defendants (Albonetti, 1997, 1998; Kramer and Steffensmeier, 1993; Kramer and Ulmer, 1996; Steffensmeier et al., 1993; Steffensmeier and DeMuth, 2000; Ulmer, 1997). Departures reward those who plead guilty rather than exercise their right to a trial, and they disadvantage male defendants (Steffensmeier et al., 1998; Everett and Nienstedt, 1999; Kempf-Leonard and Sample, 2001; Kramer and Ulmer, 1996; Engen, Gainey et al., 2003). Departures involve consideration of extralegal factors (Pribil, 1992). They shift the focus from a just deserts framework to consideration

of concerns such as blameworthiness, dangerousness, risk of future offending, and rehabilitative potential (Kramer and Ulmer, 2002).

At the same time, departures will never be entirely eliminated from the Federal Sentencing Guidelines. Nor should departure decisions be viewed generally as acts of "judicial defiance." Departures are a way of measuring whether the judges feel that the Guidelines do not sufficiently consider factors that are integral to just and fair sentencing decisions (Karle and Sager, 1991). Congress did not intend for the Guidelines to be so mechanized that they excluded all consideration for individual case factors. Instead, they intended to ensure that the Guidelines provided enough flexibility to allow adequate consideration of circumstances that may call for a sentencing departure (Pribil, 1992).

A sentencing system tailored to fit every conceivable unique offense characteristic of each case would quickly become unworkable and seriously compromise the certainty of punishment and its deterrent effect. When a court finds an atypical case, one to which a particular Guideline linguistically applies but where conduct significantly differs from the norm, the court may consider whether a departure is warranted (Hauser, 1993). This is simply because it is impossible to foresee every circumstance and anticipate every relevant case and offender characteristic (Hofer and Allenbaugh, 2003). Ultimately, the human factor cannot be removed from the sentencing decision, and therefore it will always influence the sentencing decision to some degree.

The widely criticized jurisprudence of departures has suffered from a failure to recognize the philosophy underlying the Guideline rules. The departure mechanism allows judges to help identify the Guideline's philosophy by departing whenever the Guideline's own purposes would be defeated with the imposition of a prescribed sentence

range. Departures are inevitable and necessary to offset the disparity that the Guidelines would create (Ogletree, 1988). Departures are appropriate under certain circumstances, and when utilized in pursuit of the Guideline's own purposes will reduce, not increase, true sentencing disparity (Yakren, 2003).

The number of departures is of lesser importance than the conditions under which a departure is appropriate. The first step in the departure decision should be to decide whether the characteristics of the case and the offender fall outside the scope of the heartland of the applicable Guideline. The best description of what constitutes a Guideline's heartland is the type of cases to which it should apply in order to achieve the overall stated penal purpose. According to Hofer and Allenbaugh (2003, p. 48), "there is no justice in applying the Guidelines blindly in cases where the presumptive sentence is unfair and ineffective. Treating two offenders the same because the rules say so, even though they differ markedly in their culpability, in the harm caused by their crime, or in their risk of recidivism, is to elevate the rules above reason."

There are two kinds of departures: those granted by judges at their own discretion, and those granted by judges based upon motions filed by the prosecution for "substantial assistance" to the government (USSC Guidelines Manual §5K1.1, 2000, p.372). The Guidelines provide the Government with the power, but not the duty, to file a motion for departure to the court based upon substantial assistance (Hauser, 1993). For example, the prosecution may file a motion for a downward departure in exchange for substantial assistance rendered by the defendant in prosecuting other offenders and co-conspirators involved in the criminal activity. Hence, substantial assistance departures rely upon a different source of discretion in the decision making process. The issue of whether to

group substantial assistance departures together with judicial departures by classifying them in the same category or to scrutinize them separately for analytical purposes has not yet been settled (Tonry, 1993a; Hebert, 1997).

By excluding substantial assistance departures, one runs the risk of providing an incomplete measure of judicial influence on the overall departure decision. Certainly, there appears to be some degree of overlap between the two types of downward departures, although this amount varies between circuits. During the eleven fiscal years included in the current study, federal judges provided the following three reasons as the primary rationale for granting a judicial downward departure in 520 cases: substantial assistance at motion, cooperation without motion, and cooperation.

The vast majority of departures are downward departures that lessen the sentence imposed. Although rare, upward departures do occur. A downward departure from the Guidelines results in a criminal sentence imposed by a district judge that is outside and below the prescribed sentencing range. Downward departures are justified when a case involves either atypical, extraordinary, or otherwise mitigating circumstances that were not adequately considered in the formulation of offense characteristics for the categories of crimes contained in the Sentencing Guidelines (Hauser, 1993).

Offense characteristics may fall into one of three categories: relevant, "not ordinarily relevant," or irrelevant in the determination of a departure sentence. Examples of mitigating factors that may call for a reduction in the sentence below the suggested Guideline range include circumstances such as provocation by the victim, or because of serious duress or coercion, or other atypical circumstances deemed "not ordinarily relevant" (USSC Guidelines Manual, 2001, §5K2.0 "Grounds for Departure). The

Commission does not indicate what it considers to be extraordinary circumstances. The federal courts have struggled to reach a consensus regarding the language of the policy statement issued by the Commission concerning these factors, resulting in different interpretations and applications.

Very few offenders receive upward departures outside and above the recommended Guideline's range. Examples of aggravating factors that may call for a sentence above the prescribed Guideline penalty range include actions that resulted in death, extreme physical or psychological injury, abduction, possession of a weapon, serious disruption of a governmental function, endangerment of national security or public health, or when the defendant has committed an offense for the purpose of concealing another offense (Pribil, 1992).

Before reviewing studies of departures from sentencing guidelines among the states and at the federal level, a brief summary outlining the major findings from the departure study recently completed by the Sentencing Commission will be reviewed. This departure study was part of its congressionally-mandated fifteen year review of the Federal Sentencing Guidelines. It was submitted to Congress in the fall of 2003 along with an emergency amendment to clarify the grounds for a departure from the Guidelines as outlined in numerous Guidelines Manual sections such as §5K2.0, departures under Chapter 5, Part H, §5K2.10, §5K2.12, §5K2.13, §5K2.20, §4A1.3, §5K3.1, and §1A1.1.

The U.S. Sentencing Commission's Departure Study

In October 2003, the U.S. Sentencing Commission released a study on the trends in downward departures from the Sentencing Guidelines from fiscal years 1991 through 2001 as part of their review of sentencing practice in the federal court system. Despite

the Commission's attempt to restrict the use of downward departures through policy statements and amendments that have narrowed the definition of extraordinary circumstances and flatly prohibited other departures under certain circumstances outright, they found that the downward departure rate for reasons other than substantial assistance to the government has increased from 5.8 percent in fiscal year 1991 to 18.1 percent in fiscal year 2001. The Commission posited that the reason behind this increase is the high rate of downward departures for judicial districts along the southwest border, which appears to be propelling the increase in the overall national departure rate.

In order to make the data comparable, the Commission recoded data in fiscal years 1999 through 2001, which they refer to as "revised data files" in a footnote of their report (p. 31). The fact that they recoded three years of data on departures will make replication studies very difficult. Nevertheless, the Commission found wide variation across the districts in the rate of judicial downward departures during fiscal year 2001, ranging from a mere 1.4 percent in the Eastern District of Kentucky to an astonishing 62.6 percent in the District of Arizona. This is similar to other findings of wide variation in departure rates between the judicial districts (Weinstein, 1999; Farabee, 1998). Moreover, the Commission found that those districts located in the low or high downward departure categories tended to remain generally constant over time.

When departures are compared by region, the five districts along the southwest border do appear as significant outliers, increasing almost four-fold, from 10.2 percent in fiscal year 1991 to 38.2 percent in fiscal year 2001. Nor are judicial downward departures the only type of departures that have increased during the Commission's study period. Substantial assistance departures have likewise increased from 11.9 percent in

fiscal year 1991 to 17.4 percent in fiscal year 2001. Thus, the Commission found that less than two-thirds (63.9 percent) of the cases in fiscal year 2001 were sentenced within the Guidelines sentencing range, compared to 80.7 percent in fiscal year 1991.

In addition, the Commission's study found that the majority of downward departures are justified for a small number of reasons, but these reasons vary from year to year. The Commission believes that the increase in the departure rate was due to certain legislative measures that substantially increased penalties for such crimes as immigration-related offenses. They also assert that the increase is due, in part, to lack of oversight by the courts of appeals at the circuit level. For these reasons, the Commission has amended the chapter in the Guidelines Manual that describes the conditions under which a departure is warranted. They are also trying to implement a standardized "statement of reasons" form for judges to record the reasons for departures in more detail for the Commission to track these trends better in the future.

Studies of Departures in State Sentencing Guidelines

There are a number of studies of judicial departures in sentencing outcomes in state guideline jurisdictions, each using different samples and different research methods to measure the influence of extralegal factors (Kramer and Ulmer, 1996; Langan, 1996; Miethe and Moore, 1986a; Ulmer, 1997; Johnson, 2003; 2005; Zatz, 1985). These studies share the same common purpose—determining who is more likely to receive a downward departure. This is accomplished by measuring the magnitude of the effects of numerous legal and extralegal characteristics.

Significant differences have been found between the interaction of variables such as the type of conviction, type of plea, court size, and defendant demographic characteristics such as age, gender, race, and ethnicity in determining who is more likely to receive downward departures. A downward departure is "any sentence that is less than the lowest sentence in the mitigated range of the guidelines" (Kramer and Ulmer, 2002, p. 908).

Engen, Gainey, and colleagues (2003) analyzed departures from the sentencing guidelines of Washington State and found that males and minority offenders were less likely to receive departures below the prescribed guideline ranges. They also found that race, ethnicity, and gender had inconsistent effects on departures above the prescribed guideline ranges. Their findings led them to conclude that departures were "structural sources of unwarranted sentencing disparity" (p. 99).

Among violent offenders in Pennsylvania, those convicted by trial, young Hispanic males, and offenders sentenced in small rural courts were less likely to receive downward departures (Kramer and Ulmer, 2002). Moreover, differences in the effects of legal and extralegal factors across modes of conviction have demonstrated that both black and Hispanic defendants are less likely to receive downward departures and more likely to receive upward departures compared to their white counterparts. Males and younger defendants are likewise treated more harshly at sentencing than female and older defendants (Johnson, 2003).

The departure rate has also been correlated with the size of the court, the caseload pressure, the guidelines compliance rate, and the social context of the court. Departures have been shown to vary among county jurisdictions, even in the same state. Convicted

offenders who were sentenced in large courts are more likely to receive leniency in their sentencing outcomes. Departure rates are closely related to court considerations for efficient case processing. Thus, increased trial rates were associated with greater likelihoods of upward departures. Finally, the percent of Hispanics and other minorities in the county population had significant effects on the likelihood of upward or downward departures (Johnson, 2005).

Like other states and the federal criminal justice system, Minnesota formulated its sentencing guidelines to increase neutrality in the application of criminal sanctions (Miethe and Moore, 1985; 1986a; 1986b; 1989; Moore and Miethe, 1986). However, there has been a gradual yet measurable slide back to the pre-guidelines level of disparity in sentencing outcomes over time (Moody, 1995; Moody and Marvell, 1996). Two possible explanations have been proposed to clarify the way sentences have appeared to revert to pre-guideline inequalities. These explanations were, first, the number of first time offenders who fell outside of the authority of the guidelines and, second, the increased pressure to control the growing prison population necessitated a concomitant increase in the departure rate (Stolzenberg and D'Allessio, 1994).

Recently, the discretion exercised by judges in deciding whether to depart below the prescribed guideline range in the state of Maryland was isolated and found to account for twenty percent higher sentences for African Americans than for whites (Bushway and Piehl, 2001). This was done by modeling the guidelines themselves, rather than crime severity and criminal history scores. The recommended sentence range in the guidelines represents the actions of all the other actors in the system and their decisions up to the

point of sentencing. Thus, differences between the recommended sentence and the actual sentence imposed are solely attributable to judicial discretion.

Taken as a whole, studies of departures at the state level demonstrate that a host of factors can influence the departure decision. By drawing a distinction between what sentence the guidelines tell judges to impose and what sentence the judges actually do impose, these factors can be isolated and measured. The same extralegal characteristics that influenced the in/out incarceration decision and the length-of-term decision can also influence the departure decision.

Studies of Departures in the U.S. Sentencing Guidelines

Departures from the Guidelines have been a common outcome variable for much of the research on federal sentencing decisions (Maxfield and Kramer, 1998; U.S. Sentencing Commission, 1995; 2003). The defendant's personal characteristics such as race, ethnicity, gender, educational level, and citizenship status have all been shown to significantly influence the departure decision in the federal system (Albonetti, 1997). Similar to Zatz (1984), who uncovered evidence of discrimination against Chicanos under California's determinate sentencing system, federal defendants' ethnicity conditions the effect of guilty pleas and departures on sentence severity.

Blacks, males, and offenders with low levels of education and income receive substantially longer sentences, and these disparities are due in large part to departures from the prescribed Guideline ranges. These differences have been found across offense types. Blacks and males are also less likely to receive downward departures or receive smaller reductions if they do receive departures (Mustard, 2001). When ethnicity is

included, white offenders are treated most leniently by receiving downward departures more frequently while Hispanic offenders received the harshest penalties and received the fewest downward departures. Black offenders are treated in between the other two groups (Steffensmeier and DeMuth, 2000).

Studies that measure the influence of jurisdictional characteristics on sentencing patterns and discretionary decisions also replicate those done at the state level (Kramer & Ulmer, 1996; Ulmer, 1997; Ulmer and Kramer, 1996; Daly, 1995; Spohn and Delone, 2000). These findings suggest that the geographic location of sentencing may be just as important a factor in determining sentencing outcomes as the influences of the courts' contextual characteristics. Significant variation has been found between districts for virtually all legal and extralegal factors. Even the influence of offense seriousness and criminal history has been shown to vary from circuit to circuit (Kautt, 2002).

Studies of departures in the federal system have focused on specific offenses such as crimes involving drugs (Semisch, 2000; Gomez, 1995; Kautt, 2002) and also on specific reasons for granting downward departures. The most common departure reason is based on the defendant's acceptance of responsibility (Everett and Nienstedt, 1999). Acceptance of responsibility hinges on the defendant's ability to display remorse and can result in a fifteen percent decrease in sentence length. The ability to publicly exhibit penitent emotions varies by race and ethnicity (Hebert, 1997). An offender's race and ethnicity has been shown to have a significant influence on the decision to reduce the sentence for acceptance of responsibility, even after controlling for both offender and offense characteristics (Everett and Nienstedt, 1999).

Another frequently cited downward departure reason is described as the "extraordinary family circumstances" of the defendant. Findings from these studies suggest that courts should not overlook atypical features such as the impact of incarceration upon small children of offenders (Ellingstad, 1992). The Guidelines should be flexible enough to provide for situational downward departures based on extraordinary family circumstances. As Gomez (1995, p.77) reminds his readers, "the Sentencing Reform Act did not mark sentence disparities for elimination, but rather 'unwarranted sentence disparities.'" However, the Commission has discouraged and restricted departures from the Guidelines to such a degree that the result has been sentences imposed with "unwarranted uniformity" (p. 78). The consensus of these studies is that the Guidelines should not require the judge to ignore compassion and common sense when determining a sentence for low-level or first-time offenders.

Overall, the Guidelines "do not actually reduce sentence disparity. Instead, they simply give the illusion of uniformity via their strict control of discretion when, in reality, they enable indirect extralegal disparity to persist" (Kautt, 2002, p. 660). Federal judges continue to be influenced by the offenders' personal characteristics (Hanbury, 2000). Evidence illustrates that this is the case for race and ethnicity factors. Gender has also been found to exert a significant influence on the sentencing outcome. Women receive slightly more lenient sentences and more departures than men when convicted of the same crime. These differences are often a consequence of the offender's perceived role in the offense (Semisch, 2000).

Certainly, the Guidelines were developed to make the punishment fit the crime rather than fit the offender. The underlying logic was to create penalties equal to the

gravity of the offense, and whether the effects of such punishment were equivalent for each offender was deemed to be unimportant. However, treating like offenders alike based solely on their offense of conviction may not always produce just or proportionate punishment. Owing to differing life circumstances, numerically equivalent sentences may affect one defendant much more severely than another. This is the premise upon which the jurisprudence of departures is based. While the punishment should be equivalent to the severity of the offense, judges may exercise their discretion and depart outside of the recommended Guideline penalty range based on the offender's "extraordinary" life circumstances. Thus, while the explicit reason for punishment is to balance the harm attributed to the offense, studies conducted on departures from the federal Guidelines demonstrate that the effects of punishment on the individual offender are still relevant.

Judicial Contextual Effects on Sentencing Outcomes

Federal judges are the Commission's most important constituency. It is the judges that determine the applicability and usefulness of the Guidelines. The extent to which they abide by the sentencing ranges prescribed by the Guidelines, or depart from them, and by so doing point out their apparent inadequacies, determines the success of the Guidelines. Measuring whether the Sentencing Guidelines are successful in achieving their purpose depends on whether they are consistently applied. For these reasons, the Commission is very careful in safeguarding the anonymity of the federal sentencing judges contained in their data sets.

In the meantime, research conducted on judicial decision making behavior at the state level has attempted to measure the extent to which the personal characteristics of judges do influence dispositional outcomes. The findings from these studies demonstrate the importance of considering these factors when analyzing sentencing outcomes. Taken together, these findings leave little doubt that our understanding of the sentencing process would be greatly enhanced with the benefit of studies on judicial variation performed at the federal level.

Initial research studies of state and county-level judicial behavior were unable to definitively isolate the effects of judges' personal characteristics, and "mixed results" was the conclusion drawn by many researchers in examining social attributes of judges and their sentencing behavior. For example, Gruhl et al. (1981; see also Spohn, 1990) examined conviction and sentencing decisions of male and female judges in a large, metropolitan city to determine whether gender significantly influenced the decision process. They analyzed data from over 30,000 cases with both male and female defendants and found little distinction in the conviction and sentencing decisions of male and female judges. The one interesting result uncovered by the analysis was that, compared to male judges, women judges were considerably more likely to sentence convicted female defendants to prison.

More recent studies have demonstrated a measurable impact on sentencing outcomes attributable to the personal sociological characteristics of judges (Sisk et al., 1998). For example, Coontz (2000) examined the effects of gender on judicial decisions using data collected from state trial judges in Pennsylvania. In the study, vignettes were presented to the judges who were then asked to make decisions regarding the facts of the

case. In this manner, comparisons of case outcomes based on the gender of the judge and the defendant were facilitated. Results of the analysis showed that the gender of the judge was significant.

Steffensmeier and Britt (2001) analyzed state sentencing data from Pennsylvania in order to determine whether the sentencing judge's race was a significant factor in the sentencing decision. The study's purpose was to determine if black judges were more or less lenient than white judges, and whether they used similar criteria in reaching their sentencing decisions. Results showed that the judges weighed case and offender information the same regardless of race when making punishment decisions, although black judges were more likely to sentence both black and white defendants to prison. They concluded that, while individual racial characteristics were significant, they were not as significant as the judicial role factor.

Overall, in analyzing the successful application of sentencing under the federal Sentencing Guidelines, the effectiveness of all participating courtroom actors in responding to the crime problem is being assessed (Ulmer, 1997). In particular, this study will consider the ability of judges to balance their exercise of discretion with a fair and just penalty at sentencing. Under the Guidelines, judges still retain enough discretion to decide what Special Offense Characteristics (SOCs) within the Guidelines' offense categories to apply, when to depart (except in cases of substantial assistance motions by the prosecution), and by how many levels, and the final penalty range (Schulhofer, 1992). Every offense category contains a list of SOCs that attempt to capture the exact nature of the offense behavior and raise or lower the seriousness of the offense score in order to

approximate the corresponding statute's intent to make the penalty fit the unique characteristics of the particular offense.

Ultimately, judges decide how to apply the Guidelines and whether the Guidelines are even the most appropriate, or constitutional, way to sentence convicted offenders (Wilkins and Steer, 1993). Federal judges still retain the power to make the final sentencing decision. Their decision is the final decision at the sentencing hearing. It would be unrealistic to assume, therefore, that their individual views and proclivities can be totally compartmentalized and have no impact whatsoever on the sentencing outcome.

In the end, the Federal Sentencing Guidelines minimize, but do not eliminate entirely, the discretion of federal judges over the sentencing decision. Upon accepting the determination of the federal probation officer's final offense computation and criminal history score contained in the pre-sentence investigation report, the court has the discretion to impose a sentence within the applicable Guideline range, or in extraordinary circumstances, to depart above or below the prescribed range (Nagel and Johnson, 1994). However, a departure below the Guideline range is subject to appeal by the prosecution and a departure above the specified Guideline range is subject to appeal by the defense (Stith and Cabranes, 1997; 1998).

Simultaneously, federal prosecutors have the potential to influence sentencing outcomes through the exercise of discretion concerning charges, relevant conduct of the current offense, substantial assistance motions, and plea negotiations. Historically, the U.S. Attorney decides whether charges are readily provable in court. These independent and un-reviewed decisions are justified on the grounds of case pressure and the temporal constraints of case processing (Reitz, 1998). Hence, the majority of cases are resolved

through a guilty plea within the context of a plea agreement whereby the defendant agrees to plead guilty in exchange for certain concessions by the government (Kessler and Piehl, 1998). Prosecutors may engage in charge bargaining in order to induce a plea, and they often do so (Parent et al., 1997). The plea bargaining process is traditionally discretionary and unreviewed. The result of these behind-the-scenes negotiations is that much of the case outcome is decided before any formal involvement by a federal judge and therefore never subject explicitly to an application of formal law. Consequently, although the judge remains the final arbiter of a sentence regardless of its disposition, the prosecution can affect the outcome of a case where the defendant pleads guilty by controlling what facts are presented to the court for use by the judge in rendering a sentence (Payne, 1997). This phenomenon has been described as "hidden departures" (Berman, 2000; Schulhofer and Nagel, 1997).

Just as arbitrary or unfettered discretion of judges during the era of indeterminate sentencing resulted in unlike sentences for similar offenders convicted of the same offense, unfettered prosecutorial discretion has historically resulted in dissimilar convictions for similar offenders who have engaged in the same criminal conduct (Burns et al., 1997). The discretion exercised by the prosecuting attorney in charging and in the plea negotiation process poses an obstacle to reducing disparity for which the Guidelines have no answer. For example, defendants *convicted* of bank robbery under similar circumstances may all receive the same sentence, but defendants who *commit* bank robbery under similar circumstances may receive different sentences if they are convicted on different offenses with different penalty ranges as a result of the charge bargaining process (Nagel and Schulhofer, 1992).

The federal legal code contains numerous options for charging a defendant from which the prosecuting attorney is empowered to choose. Many statutes are similar or overlapping, and they often contain various degrees of seriousness to encompass the offense conduct. If the evidence is weak, less serious charges may be brought against the offender. If the evidence is very strong, the most serious charges may be filed. The prosecutor wants to win the case. Thus, charges are influenced to a large degree by the strength of the evidence rather than the actual offense conduct (Smith and Damphousse, 1998). The fact cannot be ignored that when judicial discretion at sentencing is constrained, there is a concomitant increase in prosecutorial charge bargaining, particularly when the Sentencing Guidelines require more severe sentences than were common before the Guidelines were implemented, such as in the case of mandatory minimum sentences (Tonry, 1992; Vincent and Hofer, 1994; Wicharaya, 1995; Wallace, 1993).

The Sentencing Commission has recognized that plea bargaining negotiations can introduce disparity at later stages in the sentencing process. Charging decisions that limit or bypass the normal application of the Guidelines can result in different sentences that are both disproportionate to the severity of the offense and disparate between similarly situated offenders who engage in similar offense conduct. It was with the intent to offset these potential disparities arising during the process before sentencing that the original Commission formulated Guidelines that would capture all relevant offense behavior rather than the charges of conviction alone. In this manner, the Commission characterizes their system as a "real offense system," that factors in all conduct proved at the sentencing hearing, not just the elements to which the defendant pleads guilty or is

convicted of at trial (U.S. Sentencing Commission, 2004, p. v, xii). In addition to the relevant conduct rule, the Guidelines also use multiple count rules and cross-references among the Guidelines as mechanisms to offset the effects of uneven charging practices.

In summary, factors regarding the courtroom context should be included in a study of sentencing outcomes if a thorough understanding is to be achieved. The current study will focus on evaluating the impact of judicial influence as an overall body since the data do not permit the unraveling of their individual characteristics. Nor do the data permit the analysis of factors arising from prosecution or defense attorneys. The study will, however, look at the impact of judicial decisions on whether to incarcerate, how long to incarcerate, and whether to depart downward from the Guidelines across federal judicial districts and over eleven years time.

Research Questions Derived from the Literature Review

A number of possible research questions came to light while reviewing studies of sentencing guidelines in the states' and federal criminal justice systems. For example, after controlling for legal factors such as offense seriousness and criminal history, does the likelihood of incarceration vary significantly due to the influence of extralegal factors such as gender, race, and ethnicity? Does the mean sentence length vary under similar circumstances? Are these sentencing outcomes affected by whether the defendant pleads guilty or is convicted in a trial? Does the district court location or the year of sentencing have a significant influence on the sentencing outcome? Under what circumstances do gender, race, and ethnicity factors influence sentencing outcomes under the federal Sentencing Guidelines? How influential are other extralegal characteristics such as

citizenship, age, educational level, and family status on the sentencing outcome? Finally, under what circumstances, and to what extent, is a judicial downward departure more likely to occur? These questions suggest numerous possibilities for potential lines of relevant research. In the following section, the major theoretical perspectives on the sentencing process will be reviewed to discern which outcomes are predicted.

TABLE 3.1. SUMMARY OF STATE-LEVEL AND OTHER STUDIES OF SENTENCING SYSTEMS

Author(s) & Publication Year	Data Description	Relevant Findings
Britt, 2000	Pennsylvania State data, 1991-1994 N= 128,916 (in/out) N = 76,120 (length of sentence)	Examines racial disparity in in/out decision and length of sentence. Finds that the effects vary by court jurisdiction. Punishment severity also varies by court jurisdiction. The effects of extralegal factors such as race, gender, offense severity, and prior record are used differently by judges.
Bushway and Piehl, 2001	Maryland State data, July 1987 to 1995 (8 yrs) N = 14,633 offenders convicted of person offenses	Isolated the discretion of judges in the sentencing decision by modeling the guidelines themselves. Finds that blacks receive 20% longer sentences than whites.
Chiricos, Welch, and Gertz, 2004	National Random Survey of Households, 2002 N = 885	Uses OLS regression to show that racial typification of crime is a significant predictor of punitiveness.
Engen and Gainey, 2000	Washington State data, July 1989 - June 1992 N = 36,949	Controls for the presumptive sentence to improve the fit of the models predicting sentencing decisions. This lessens the effects of sex and race considerably. They demonstrate that linear additive models are misspecified. Concludes that sentence length is "overwhelmingly" determined by seriousness of offense and criminal history.
Engen, Gainey, Crutchfield, and Weis, 2003	Washington State data, July 1989 - June 1992 N = 46,552 convicted offenders	Looks at departures and structured sentencing alternatives. Finds that males and minority offenders are less likely to receive alternative sentences below the standard range. Race, ethnicity, gender, age, and type of plea all have significant effects on the likelihood of downward departures. Finds inconsistent effects above the

TABLE 3.1. SUMMARY OF STATE-LEVEL AND OTHER STUDIES OF SENTENCING SYSTEMS

Author(s) & Publication Year	Data Description	Relevant Findings
		range.
Griffin and Wooldredge, 2006	Ohio State data 5,472 felony convictions from 24 of 88 trial courts, including all 6 urban counties. (3,951 for imprisonment & 1,963 for sentence length) Info gathered from prosecution & felony probation offices. Before = July 1, 1995 to June 30, 1996 After = Jan. 1, 1997 to Dec. 31, 1997	Studies gender disparity before and after sentencing reforms by looking at imprisonment decision and length-of-term decision. Finds that females were less likely to go to prison before and after the reforms. Drug convictions increased the likelihood of imprisonment. Sentence length disparities based on race and children were reduced after the reforms.
Holleran and Spohn, 2004	Pennsylvania State data, 1998 N = 4, 026	Emphasized the need to distinguish between jail and prison sentences rather than one overall incarceration variable.
Jeffries, Fletcher, and Newbold, 2003	New Zealand, 1990-1997 N = 194 matched pairs of men and women	Examines gender differences in sentencing using path analysis and finds that women are treated more leniently than men for both the in/out decision and the length of term decision. Builds on evidence that sex-based decision making earlier in the process contributes to sex-based outcomes later on at the end stages of the process.
Johnson, 2003	Pennsylvania State data, 1996-1998 N = 109,931	Examines race and ethnicity effects on departures among 4 different types of convictions. Finds that the extralegal effects vary considerably across the modes of conviction. Overall, blacks and Hispanics have a reduced likelihood of receiving a downward departure in comparison to whites.
Johnson, 2005	Pennsylvania State data, 1997 N = 42,325 downward departures	Uses HLM to find that likelihood of departures varies across courts and is conditional on court size

TABLE 3.1. SUMMARY OF STATE-LEVEL AND OTHER STUDIES OF SENTENCING SYSTEMS

Author(s) & Publication Year	Data Description	Relevant Findings
	N = 143,102 upward departures	(large), caseload pressure (trial tax), guidelines compliance rate, and social court context.
Koons-Witt, 2002	Minnesota State data N = 635 (pre-guidelines) N = 1,545 (early guidelines) N = 835 (later guidelines)	Compares the effect of gender on the decision to incarcerate before and after implementation of guidelines. Finds that women with small children were less likely to be incarcerated before sentencing guidelines. Evidence suggests that judges tend to return to previous patterns of sentencing to satisfy ideals of justice and fairness.
Kramer and Steffensmeier, 1993	Pennsylvania State data, 1985-1987 N = 61,294 cases	Uses additive and interactive models to test effects of race on imprisonment decisions. Finds that race affects in/out decision by favoring whites. Race doesn't have a direct effect on length of sentence, but blacks are more likely to be incarcerated.
Kramer and Ulmer, 2002	Pennsylvania State data, 1997-1999 N = 3,243	Looks at downward departures. Defendants who go to trial, young Hispanic males, and offenders sentenced in small rural courts are less likely to receive downward departures. Those who plead guilty, are convicted of aggravated assault, are young black women, and are sentenced in large urban courts more likely to depart.
Lee, 2001	13 States with Sentencing Guidelines	Finds considerable variation between the states' guidelines systems. Guidelines can reduce or control prison populations. Finds little evidence of any association between guidelines and crime rates.
Marvell, 1995	9 States with Sentencing Guidelines	Examines the relationship between sentencing

TABLE 3.1. SUMMARY OF STATE-LEVEL AND OTHER STUDIES OF SENTENCING SYSTEMS

Author(s) & Publication Year	Data Description	Relevant Findings
		guidelines and prison populations in 9 states. Found that prison populations decreased in 6 of the 9 states.
Sorensen and Stemen, 2002	State Sentencing and Corrections Archive at the Vera Institute of Justice. All 50 states N = 36 state sentencing policies	Looks at the relationship between sentencing policies, incarceration rates, prison admission rates, and average length of sentence during the late 1990s. Concludes that determinate sentencing, mandatory minimums, and truth-in-sentencing laws have no effect on rates of incarceration or prison admission rates. Instead, they are determined more by crime rates, percentage minority population, and citizen ideology. Finds sentencing guidelines are associated with lower prison admission rates.
Spohn and Holleran, 2000	3 Large Urban Jurisdictions in 3 states (Illinois, Florida, Missouri)	Extends the study of Steffensmeier et al. (1998). Replicated findings that young, black males received harsher sentences due to the interaction effects. Looks also at Hispanic ethnicity and employment status in a multi-jurisdictional approach. Younger, unemployed minority defendants face higher odds of incarceration.
Steffensmeier, Kramer, and Streifel, 1993	Pennsylvania State data, 1985-1987 N = 61,294 Plus interviews with judges	Examines the effect of gender and finds that it has a small effect on the likelihood of incarceration, but no effect on the length of term decision.
Steffensmeier, Kramer, and Ulmer, 1995	Pennsylvania State data, 1989-1992 N = 120,300 offenders, for 15 offense types	Examines age effects (elderly offenders) for in/out decision and length of term decision. Finds that older offenders (in 50s and 60s) receive the most

TABLE 3.1. SUMMARY OF STATE-LEVEL AND OTHER STUDIES OF SENTENCING SYSTEMS

Author(s) & Publication Year	Data Description	Relevant Findings
		lenient sentences.
Steffensmeier, Ulmer, and Kramer, 1998	Pennsylvania State data, 1989-1992 N = 139,000 cases	Examines race, age, and gender effects on in/out and length of term decisions (logit and OLS regression). Finds that young, black males are sentenced more severely than any other group. The interaction effects are greater than the effects of these variables individually.
Steffensmeier and DeMuth, 2001	Pennsylvania State data, 1991-1994 N = 96,000 cases	Finds that Hispanic defendants have the highest likelihood of punishment severity for in/out decision and length of term decision, for drug and non-drug crimes.
Ulmer and Kramer, 1996	Pennsylvania State data, 3 counties 1985-1991 Plus qualitative data from interviews	Examines effects of race, gender, and trial versus plea (mode of conviction). Finds that they are still influential, even in a structured sentencing system. Women were 2.13 times as likely as men to receive a downward departure.
Ulmer and Kramer, 1998	Pennsylvania State data – 3 Counties, 1991-1992	Finds significant gender and race differences in all three counties for in/out decision and length of term decision.
Ulmer and Johnson, 2004	Pennsylvania State data, 1997-1999 N = 108,169 (in/out) N = 59,852 (length of sentence)	Uses HLM to show that court organizational culture, caseload pressure, and racial and ethnic composition affect sentencing outcomes for both in/out and length of sentence. Large courts were least likely to incarcerate. Caseload pressure was negatively related to likelihood of incarceration. Minority effects varied with pop % minority.

TABLE 3.2. SUMMARY OF FEDERAL-LEVEL STUDIES OF GUIDELINES SENTENCING

Author(s) & Publication Year	Data Description	Relevant Findings
Albonetti, 1997	USSC data, FY1991-1992 N= 14,000 drug offenders	Ethnicity significant for guilty pleas and departures.
Bush-Baskette, 2000	USSC data, FY1996 N = 42,436 convicted offenders	Finds that mandatory minimums for crack cocaine are related to both the in/out decision and the length of sentence decision for black females.
Chanhatasilpa, 2000	USSC data, FY1994-1997 N = 170,375 convicted offenders	Concluded that the Guidelines do not discriminate against Asian defendants. Race was not significant in the in/out decision. Asians received a bit longer sentences than white defendants, but less than black defendants.
Everett and Nienstedt, 1999	USSC data, between Dec. 1990 – April 1991 N = 4,731 Cases 1 district from each of the circuits (n=12) was randomly chosen for face-to-face interviews	Examines offenders who received downward adjustments for "Acceptance of Responsibility." Minority defendants are less likely to receive this adjustment. Women are more likely than men.
Farabee, 1998	2 federal district courts (MA & CT). FY1993-1996 drug and fraud convictions where the defendant received a downward departure. Plus interviews with judges, prosecution and defense attorneys, and probation officers	Analyzes departures and the discretion used to justify them. Finds that more downward departures are the result of prosecutor's motion for substantial assistance in Mass, but a wide variety of judicial downward departures were the most common in Connect.
Gomez, 1995	USSC data	Departures for "extraordinary family circumstances." Finds that a series of factors which, in isolation, will not remove a case from the heartland may, when considered together, invite departures. Low level drug offenders who are non-citizens and under-educated are "over-punished."

TABLE 3.2. SUMMARY OF FEDERAL-LEVEL STUDIES OF GUIDELINES SENTENCING

Author(s) & Publication Year	Data Description	Relevant Findings
Hanbury, 2000	USSC data, FY1995 N= 1,918 (5% Random Sample)	Offender's personal characteristics affected the probability of receiving downward departures after controlling for legal variables.
Hebert, 1997	USSC data, 1989 N = 5,557 drug offenders (in/out) N = 5,336 (length of sentence)	Examines race effects for drug offenders for in/out decision (logistic regression) and length of sentence (OLS regression). Finds that blacks convicted of cocaine offenses and Hispanics convicted of cocaine and marijuana offenses were more likely to be incarcerated than white offenders. Blacks received longer sentences than whites.
Kautt, 2002	USSC data, FY 1999 (Matched to Census data, UCR data, and federal criminal case processing statistics) Drug trafficking cases (single offense only)	Examines the geographical location of sentencing through hierarchical linear modeling (HLM). Found that both district and circuit location affected length of sentence. Hispanics, males, and going to trial also significantly increased the duration of a sentence.
Kautt and Spohn, 2002	USSC data, FY 1998 N = 13,183 drug offenders	Looks at interaction between race (black) and drug type (crack cocaine). Finds that race conditions the effects of drug type using a data partitioning strategy (3 groups) and OLS to model length of sentence. Race exerts a complex and strong influence over sentencing outcome using mandatory minimums, and "deliberate mitigation" in Guidelines sentencing outcomes.

TABLE 3.2. SUMMARY OF FEDERAL-LEVEL STUDIES OF GUIDELINES SENTENCING

Author(s) & Publication Year	Data Description	Relevant Findings
Kempf-Leonard and Sample, 2001	USSC data, FY1993-1994 in 1 Circuit (8th Circ) N = 4,730 Cases	Examines disparity by sex, race, socioeconomic status, and family status for in/out decision, length of term decision, and departures from the Guidelines (OLS regression). Finds that sentencing is dictated largely by relevant legal factors, but personal circumstances do negatively influence case outcomes for some defendants. Disparity persists.
Kesler, 2003	USSC data, FY1999	Examines gender effects and finds differences. Concludes that gender-related factors such as role in the offense and criminal history may help explain and possibly justify gender differences in sentencing.
LaCasse and Payne, 1999	2 federal districts of New York. Cases initiated and resolved between 1981 and 1995 for before/after Guidelines comparison (USSC data from 1991 through 1995)	Examines plea bargaining behavior pre- and post-reforms. Contrary to expectations, finds that the variation in sentences attributable to the judge has increased rather than decreased after sentencing reforms. Sentencing guidelines have failed to reduce the amount of variation attributable to judge assignment.
Mustard, 2001	USSC data, FY1991-1994 N= 77,236 offenders	Finds that large differences in the length of sentence exist on the basis of race, gender, education, income, and citizenship. Over half of the unaccounted-for differences are generated by departures. Finds gender and racial differences in in/out decision. Finds these differences exist across offense types.

TABLE 3.2. SUMMARY OF FEDERAL-LEVEL STUDIES OF GUIDELINES SENTENCING

Author(s) & Publication Year	Data Description	Relevant Findings
Nagel and Johnson, 1994	USSC data, 1991-1992	Examine the effect of gender on female offenders sentenced under the Guidelines for drug offenses, embezzlement, and fraud. Finds that differential (favorable) treatment of women has not been eliminated.
Payne, 1997	3 federal district courts 1980-1991 (NY & PA)	Examines case resolution, mandatory minimums, and mean length of prison sentences pre- and post-guidelines. Finds that more offenders plead guilty post-guidelines, and sentences for drug offenses have increased due to Mand. Mins., but sentences have not increased for other crimes. Guidelines effects on sentence variation was negligible and decreased inter-judge disparity in some courts.
Semisch, 2000	USSC data, FY1995 N = 2,657 drug trafficking cases 34 Matched Pairs for Qualitative Study	Finds gender disparity among offenders convicted of drug trafficking. Women have lower odds of imprisonment and receive larger Guideline departures than men for the same drug crime. Perceived role in the offense was primary influence.
Sisk, Heise, and Morriss, 1998	294 federal case dispositions regarding the constitutionality of the sentencing guidelines during 1988.	Finds that individual district judges who reached the same decision arrived at the outcome using different constitutional theories, alternative styles of analysis, and different modes of legal reasoning. 179 judges (60.9%) invalidated the Guidelines and 115 judges (39.1%) sustained the Guidelines against constitutional challenges.

TABLE 3.2. SUMMARY OF FEDERAL-LEVEL STUDIES OF GUIDELINES SENTENCING

Author(s) & Publication Year	Data Description	Relevant Findings
Smith and Damphousse, 1998	111 convicted terrorists 482 convicted non-terrorists (Model estimates were based on 500 cases—97 terrorists and 403 non-terrorists)	Those identified as terrorists by the FBI's list were less likely to plead guilty and go to trial. Their average sentence length was four times longer than for non-terrorists. Finds that increased public and political support for getting tough with what are perceived to be especially heinous crimes can lead to more consistent and harsher punishment for particular types of offenses. A proactive political environment may be a more important predictor of sentence length than crime severity.
Steffensmeier and DeMuth, 2000	USSC data, FY1993-1996 (*limited to only males and U.S. citizens) N = 89,637 convicted offenders	Extends the study of Albonetti (1997) and examines race and ethnicity differences in sentencing outcomes for in/out decision (probit regression) and length of sentence (OLS and tobit regression). Finds white defendants are favored, blacks are in the middle, and Hispanic defendants are penalized the most. Blacks and Hispanics had higher offense severity scores, lengthier criminal histories, were younger and less educated than white defendants.
Weinstein, 1999	USSC data, FY1996 for all districts	Examines the rate of substantial assistance departures through an analysis of supply and demand in the cooperation market (game theory). Suggests that a numerical limit on the number of defendants who may receive 5k departures be imposed on prosecutors.

CHAPTER IV: THEORY

According to Lubitz and Ross (2001), sentencing guidelines have proven to be more than just a temporary trend in the state and federal court systems. Whether they are the panacea that legislatures are looking for when deciding how to solve the "crime problem" has yet to be determined or acknowledged. However, it is the ideological neutrality of guidelines that has constituted both their strength and staying power. In this day and age, no politician can afford to be viewed by their constituents as "soft" on crime and expect to receive the votes necessary to ensure political victory and longevity in public office.

Sentencing guidelines, regardless of their place of implementation, promise to introduce more uniformity and consistency into the sentencing process. The reasoning behind many of the proposed sentencing guidelines systems is to standardize the sentencing decision by prescribing proportionate punishments and appropriate incapacitation. This is true whether the guidelines are voluntary and advisory or presumptive and even mandatory. Hence, in order to determine the success or failure of a guidelines system, the philosophy driving the system must be specified, the goals of its implementation must be enumerated, and the resulting outcomes measured by those criteria.

Philosophies of Punishment

There are four purposes of sanctions. These purposes are to punish, to deter, to incapacitate, and to rehabilitate (Tonry, 1996). These four sanction purposes often have overlapping goals. They also have competing goals. Overall, they share the ideal of halting the criminal behavior that is harmful to society. Each purpose of sanctioning is

based on a theory of why people engage in criminal conduct and what will influence them to desist and stop committing crime, voluntarily or otherwise (Karle and Sager, 1991).

Thus, sentencing is a decision-making process affected by the goals of sanctioning and dependent upon the particular sentencing system being used, the philosophy in which it is framed, and the actual custody options available. These goals are outlined in sentencing reform legislation with varying degrees of specificity. The most frequently emphasized goals are public safety, just deserts, maintaining moral order, and treating and rehabilitating the offender (Mears, 1998). More often than not, several goals are emphasized, as are the means by which these goals are achieved. This situation may lead to ambiguity among courts in determining the appropriate sentence, depending on which goal of sentencing is used to influence the sentencing decision.

Philosophy of the Federal Sentencing Guidelines

A sentencing guidelines system can be based on different philosophies of sentencing, some of which may appear to compete with one another, but do indeed coexist based on the amount of emphasis or importance placed on one versus the other. In the federal system, rehabilitation coexists with just deserts, but the amount of weight placed on the importance of rehabilitation is far less than, and some would argue, overshadowed by, that of just deserts.

Following the writings of Andrew von Hirsch (1980), a leading just desert theorist, offense seriousness in the Guidelines is measured along two dimensions, namely harmfulness of the offense conduct and culpability of the offender (von Hirsch and Hanrahan, 1981; von Hirsch et al., 1987). The principle of proportionality prescribes that

the imposed sanction reflects the gravity of the offense and the criminal background of the offender. It requires that offenses be ranked according to their seriousness. Consistency and uniformity prescribe that offenders who have similar records and were convicted of similar crimes receive similar sanctions. Rationality and transparency hold that sentences be based on clearly articulated rules and policies that apply equally to all offenders, and that the sentencing process is open and observable (Mustard, 2001).

The original Commissioners' time expired before they could ever work out their differences and reach a consensus on the driving theoretical orientation of the Guidelines (Tonry, 1996). Because of tight deadlines, the Sentencing Commission failed to articulate a philosophy of punishment when promulgating the initial Sentencing Guidelines. Without a clearly stated purpose of punishment, federal judges have been left without a fixed systematic rationale to inform their application of the Guidelines. A shared philosophy of punishment must be applied uniformly by all judges in all cases if arbitrary sentencing decisions and unwarranted disparities in sentencing outcomes are to be prevented (Yakren, 2003).

Since its creation, the Sentencing Commission was invested with the authority to develop Sentencing Guidelines, an authority which gives a very small group of highly educated, elite, and politically-influential people power over a very large class of powerless individuals who have received the label of convicted offenders by the courts (Parent et al., 1996). In addition, legislative interference is seldom beneficial for a uniform philosophy of punishment. When Congress pushes through rushed legislation that is enacted in response to the "crime of the day," the rationality of the Guidelines system often takes a direct hit. Thus, preventing micromanagement by members of

Congress while preserving the policymaking function vested in the Sentencing Commission will be an enduring challenge (Parent et al., 1997).

Hofer and Allenbaugh (2003), current and former employees of the U.S. Sentencing Commission, respectively, have offered a philosophy of the Federal Sentencing Guidelines, although they conceded that their article did not reflect the official position of the Commission or its individual Commissioners. They reason that the philosophy of the Federal Sentencing Guidelines can be identified through a process of "rational reconstruction." In other words, a clear philosophy would emerge through a process of reconstruction and examination of important correlates such as departures, judicial decisions at sentencing and appellate review, and amendments to the Guidelines over time. Using this approach, the authors assert that the Federal Sentencing Guidelines were formulated and exist within a "modified just deserts framework" (p. 20).

The just deserts philosophy of punishment is clearly the foremost philosophy in the implementation of the Federal Sentencing Guidelines. The primary factor in determining a just sentence under the Guidelines system is matching the severity of the imposed sentence to the seriousness of the offense, based on the inflicted harm and the culpability of the offender. The second philosophy of punishment, incapacitation, is the utilitarian reason why it is called a "modified just deserts" framework. According to the theory of incapacitation, the more danger the offender poses to society at large, and the increased odds of recidivism, the greater the need to incapacitate them for longer periods of time. Hence, an offender committing his fifth crime would be punished more severely than an offender committing the same crime for the first time.

Deterrence is the third philosophy of punishment in order of importance in the Federal Sentencing Guidelines. Deterrence relies on three components, namely certainty, celerity (swiftness), and severity. The emphasis on certainly and celerity is much greater in the preliminary stages of the criminal justice system, and both fade in importance at the sentencing stage of the criminal justice process. Severity, on the other hand, takes on greater importance at this stage. Severity is one of the primary factors weighed by the Sentencing Guidelines. In other words, the most severe or harmful offenses require imposing the most severe penalties.

Rehabilitation is the fourth and final philosophy of punishment contained in the Federal Sentencing Guidelines. Critics of the Sentencing Guidelines have argued that the philosophy of rehabilitation has been pushed so far down the list of penal priorities, that it exerts no influence whatsoever over the sentencing process (Tonry, 1996; 1999). It should be remembered, however, that the Guidelines were developed in an era when conclusions from research proclaimed that rehabilitation "doesn't work" (Martinson, 1974). Treatment and training programs were subsequently scaled back or disappeared altogether in many state and local penal systems as well. As currently formulated in the federal Guidelines, it is simply not possible for rehabilitation to take precedence over the other three penal philosophies in the modified just deserts model.

The "hybrid theory" proposed by Hofer and Allenbaugh (2003, p. 24) has been criticized as inherently flawed because it rests on the integration of incommensurable principles of punishment. In other words, any theory of punishment that seeks to meld utilitarianism and retribution necessarily fails the test of both horizontal and internal consistency. The two theories are mutually incompatible, which means they cannot be

integrated in any principled manner (Rappaport, 2003). A hybrid sanctioning theory would prevent the Commission from offering a fully principled justification for the process of sentencing offenders within a Guidelines system. As a result, this approach would only reintroduce a degree of arbitrariness back into the sanctioning process. Adopting a pure utilitarian philosophy would meet the requirements leading to a fully-developed rational system, make the Commission appear more principled and legitimate, and encourage more theoretical research of the Guideline's performance (Parker and Block, 2001).

Moreover, if the Guidelines operated under a modified just deserts philosophy, the defendant's cooperation would not be rewarded with a substantial assistance departure. Cooperation at adjudication has nothing to do with the defendant's mental state at the time the crime was perpetrated. Actions taken in order to receive a reduced sentence are not indicative of a commendable or less blameworthy character. Thus, the adjustments constructed within the Guidelines themselves undermine their proposed philosophy (Schwartz, 2003).

It is also worth noting that the paradigm of restorative justice is entirely excluded from the philosophy of the Sentencing Guidelines. Again, this absence speaks to the era in which the Guidelines were developed. In recent years, proposals have been put forward on how to integrate the principles of restorative justice into a guidelines system (i.e. Lubitz and Ross, 2001), but they have not yet drawn substantial attention from Congress or the Commission.

Theoretical Explanations for Sentencing Outcomes

The sentencing process has been described empirically much more than it has theoretically. This is especially true for sentencing studies conducted in the federal court system. Theoretical explanations allow for prediction and testing, increasing the explanatory power of independent and dependent variables over time in a cumulative fashion. An overview of the major perspectives for predicting sentencing outcomes is useful before introducing the theoretical predictions of the current study.

Attribution Theory

At sentencing, judges are required to make decisions that will affect the convicted offenders for a very long time, and frequently they must make these decisions with insufficient information, resulting in considerable uncertainty. This process whereby judges attempt to reduce uncertainty in the sentencing process through stereotypical attributions has been described in detail by Albonetti (1991). Kramer and Ulmer (2002) describe the process in a similar way. They suggest that judges and prosecutors cannot always digest the information they have at their disposal. Therefore, they make attributions about case and defendant characteristics to manage this uncertainty.

These attributions that court officials develop and employ mental images often are based on offenders' similarities to other offenders they have dealt with in the past or to officials' personal conceptions or mental images of such offenders. The court makes judgments about the offender's character, attitudes, motivations, and background that influence the sentencing outcome. An offender's attitude displayed in the courtroom can become its own aggravating or mitigating factor at sentencing.

Differential attributions about the causes of crime act as a mediating factor between race and sentencing recommendations (Bridges and Steen, 1998). In studies of state court systems, judges commonly assign attributes to offenders during a brief assessment process in order to determine the likelihood of recidivism. Court officials attribute crimes by minorities to negative personalities and attitudinal traits whereas the crimes committed by whites are attributed to negative influences in their social environments. The socially advantaged are the most likely to avoid punishment. When minority offenders are stereotyped as particularly predatory or disposed to chronic criminal offending, they "are seen as more villainous and therefore as deserving of more severe penalties" (Peterson and Hagan, 1984, p. 67).

The Court Community Perspective

Sentencing outcomes are produced in organizational contexts, and it therefore is logical to expect that these contexts are influential in producing variation in sentencing (Ulmer, 1997). The organizational context of court communities has typically been measured by describing a court's caseload, structure, size, location, and organizational norms, or by distinguishing them as rural or urban, tightly coupled versus loosely coupled, or bureaucratic versus non-bureaucratic (Mears, 1998). Likewise, it is important to consider the larger cultural, political, and social contexts in which sentencing occurs (Smith and Damphousse, 1998). The courts are ensconced in ecological context (Jacob, 1997). They exist as part of a larger institutional environment whereby they are continuously engaged in exchange relationships with other organizations such as prisons, law enforcement agencies, legislatures, politicians, and other government social welfare agencies (Dixon, 1995).

The court community perspective magnifies the dynamic interactions of courtroom workgroups and views courts as "communities of action and communication based on participants' shared workplace, interdependent working relations between key sponsoring agencies, and local legal and organizational culture" (Kramer and Ulmer, 2002, p. 902). These court communities determine sentencing outcomes and processes in a manner equivalent to that shared by formal policies and legal structures (Eisenstein et al., 1988; Ulmer, 1997; Ulmer and Kramer, 1996; 1998). Savelsberg's (1992) theoretical analysis of sentencing guidelines is based on the same line of reasoning—that the substantive rationality of local court contexts and the individual proclivities of the workgroup may undermine formal rational decision-making practices such as those prescribed in the sentencing guidelines.

In the court community's perspective, criminal courts are composed of judges, prosecutors, and defense counsel whose relations and decisions are interdependent, and who form workgroups that often remain stable over considerable periods of time (Eisenstein and Jacob, 1977). This interdependence is created by the bureaucratic social settings in which they work, their sponsoring organizations, and the local legal culture (Ulmer and Kramer, 1998). Moreover, it implies that courts are localized, diverse, and embedded within the larger context of case processing, sentencing practices, and state criminal justice policies.

In the social organizational setting of the court community framework, coupling refers to "the degree to which actions of one participant have predictable consequences for another" (Jacob, 1997, p. 6). When activities are tightly coupled, the consequences are immediately predictable. When activities are loosely coupled, the consequences of

one individual's actions in this interdependent relationship may not be readily discernable or predictable.

Similar to other organizations, the federal district courts contain elements of both tight and loose coupling. Typically, the result of this commingling is that a constant tension exists between the push to couple more tightly and the pull to couple more loosely. The thrust of the Sentencing Guidelines is to increase predictability in the federal criminal courts. At the same time, the courtroom workgroup is attempting to impose a just and equitable sentencing outcome to fit the crime and the individual needs of the convicted offender. In particular, district judges are acutely aware of this tension in coupling as they are called upon to make expedient managerial decisions and simplify and routinize the sentencing procedure. In state courts, the consequences of this tension have been found to result in a conciliar judicial leadership role and sluggish, incremental change that promotes responsiveness to the interests of powerful clientele while short-changing less influential clients of the courts (Jacob, 1997).

The Organizational Efficiency Perspective

The need to process cases in an efficient and expeditious manner, or at least to avoid backlogs, characterizes the organizational efficiency perspective. This perspective is characterized by the need to be sensitive to the finite nature of criminal justice resources (Johnson, 2003). The push to rapidly process cases and to conserve scare resources may explain certain circumstances of circumvention of the sentencing guidelines and rewarding individual offenders for pleading guilty. At a minimum, it highlights the need to examine the influence of caseload pressures on courtroom decision-making outcomes (Dixon, 1995; Johnson, 2005). The Federal Sentencing

Guidelines have a policy called "Early Disposition Programs (EDP)" that reward defendants who agree to allow their cases to be fast-tracked through the system.

Research has shown that the implementation of sentencing guidelines in state court systems depend on local relationships and activities of the courtroom actors along with informal decision-making criteria such as that used during plea negotiations. Owing to circumstances such as time constraints, courtroom actors use the formal decision making criteria set by the guidelines in an interpretative, situationally-contingent manner to aid them in coping with uncertainty in case processing and sentencing (Albonetti, 1991; 1997). Federal judges, like everyone else, operate in a world of imperfect and incomplete information (Hebert, 1997). Because of this, they develop and use a "perceptual shorthand" when faced with situations of incomplete information that is linked to race, ethnicity, gender, and age characteristics. The contexts of these stereotypes are internalized by the court actors and are utilized in order to make case processing more efficient (Steffensmeier et al., 1998, p. 769).

This is done in the context of furthering their respective organizational interests and ideals of justice (Ulmer and Kramer, 1998; Ulmer and Johnson, 2004; Johnson, 2005). For convictions that are the product of a guilty plea, Albonetti (1999, p. 304) surmised that sentence severity is likely to be the result of interplay between legality, case complexity, and "bureaucratic interests in efficient case processing." The primary way in which court actors achieve efficiency is by inducing guilty pleas. Thus, more lenient outcomes should occur in courts with greater caseload pressures and lower trial rates while more severe penalties should be expected when courts are experiencing higher trial rates.

The Focal Concerns Perspective

The most common perspective proposed to describe the mechanisms underlying the sanctioning process under a guidelines regime is that of "focal concerns." The premise of the focal concerns perspective contends that judges' sentencing decisions reflect their assessment of the culpability of the offender, their desire to protect the community, and their concerns about the social costs of sentencing decisions (Kautt and Spohn, 2002; Ulmer and Johnson, 2004; Kramer and Steffensmeier, 1993; Kramer and Ulmer, 1996; Kramer and Ulmer, 2002; Steffensmeier and Britt, 1998; Steffensmeier and DeMuth, 2001; Steffensmeier et al., 1993; 1995; 1998). This explanation is an extension of the court community perspective. The development of the focal concerns perspective also draws on the work of Albonetti (1991).

According to this perspective, judges and other court community actors assess the implications of these imputed characteristics on the three focal concerns of blameworthiness, dangerousness/community protection, and practical constraints and consequences. The relative weight and emphasis of these concerns are embedded in local court community culture, organizational contexts, and politics. Thus, they are understood and communicated without the necessity of verbal or written explanations among workgroup members.

The focal concerns perspective expects legal factors to influence the sentencing decision to a much greater extent than extralegal factors (Steffensmeier et al, 1998). Blameworthiness attempts to capture the degree of offender culpability and quantify the amount of injury or damage caused by the commission of the offense. This is derived from the retributive philosophy of punishment and is dependent on such factors as the

offender's role in the offense. Protection of the community refers to the need to incapacitate more dangerous offenders and deter other potential offenders. Practical constraints and consequences encompass both the concerns for organizational efficiency, stability, and continuity, and the impact of punishment on the individual offender (Johnson, 2003). The relative emphasis and subjective interpretation of these three focal concerns varies across court communities (Ulmer and Johnson, 2004).

By integrating and expanding concepts from the other perspectives, the focal concerns framework offers the most comprehensive explanation available for sentencing outcomes. Yet, to date, it has not been applied to the sentencing process with federal-level sentencing data. Perhaps this is due to the idea that federal courts appear to be more removed from the surrounding community environment than state and local courts. If sentencing outcomes vary between districts, as suggested in prior research, then this supposition of an insulated courtroom workgroup is not warranted. Nor is it warranted if sentencing outcomes change over time. This study will examine the influence of both legal and extralegal factors on the sentencing outcome in federal district courts from 1993 through 2003. Whether these measures are equivalent to those done with state-level data to capture blameworthiness, protection of the community, and practical constraints and consequences has not yet been determined.

Theoretical Predictions of the Study

The purpose of this research is to evaluate judicial discretion and unwarranted disparities in sentencing outcomes using eleven consecutive annual data sets collected and disseminated by the U.S. Sentencing Commission from fiscal years 1993 through 2003. After reviewing the literature on research conducted on both state and federal determinate sentencing systems and evaluating relevant theories and paradigms regarding sentencing decisions and court contexts, seven hypotheses were derived. These hypotheses will draw upon the existing theoretical framework surrounding courts and sentencing practices, while testing their degree of influence over time.

As is apparent from these predictions, the underlying rationale for this analysis is that unwarranted disparities which existed before the Guidelines were enacted, and which might have persisted in the early years, should have diminished significantly over time as the Guidelines became institutionalized throughout the federal judicial conference. If the Guidelines are functioning properly, these predictions should be borne out over the decade of sentencing data analyzed in this study. However, if the specific unwarranted disparities targeted by this study do not diminish significantly, the issue must be raised as to whether determinate sentencing reform in the federal judicial system in general, and the Guidelines in particular, have contributed to a more just system of sentencing than did the previous indeterminate sentencing system.

The first three hypotheses focus on the effects of gender, race, and ethnicity on the three judicial decisions of whether to impose a sentence of incarceration, of defining the length of the term of incarceration, and whether to grant a downward departure below the prescribed guideline penalty range. The predictions embedded within these

hypotheses are grounded in both attribution theory and the focal concerns perspective which suggest that discretion exercised by judges is affected by stereotypical patterned responses and perceptual shorthands (Albonetti, 1991) tied to extralegal offender characteristics. In other words, judges take ascribed offender characteristics into account when determining sentencing outcomes. Moreover, with regard to race and ethnicity, group threat theory would predict harsher sentencing outcomes for minority groups since they have historically been viewed as more threatening and dangerous to the community.

Hypothesis 1: Disparities attributable to the exclusive influence of specific extralegal factors on the imprisonment decision should decrease over the eleven years of data in the study period as the Guidelines become more institutionalized.

(a) Racial and ethnic disparities on the in/out decision will decrease over time. Specifically, white defendants will be less likely to receive incarceration sentences than Hispanic defendants, who in turn, will be less likely to receive incarceration sentences than black defendants, but these differences will converge over time.

(b) Gender disparities on the in/out decision will decrease over time. Female defendants will be less likely to receive incarceration sentences than male defendants, but these differences will converge over time.

Hypothesis 2: Disparities attributable to the exclusive influence of specific extralegal factors on the length-of-term decision should decrease over the eleven years of data in the study period as the Guidelines become more institutionalized.

(a) Racial and ethnic disparities in mean sentence length will decrease over time. White defendants will be less likely to receive as long a mean sentence as Hispanic defendants, who in turn, will be less likely to receive as long a mean sentence as black defendants, but these differences will converge over time.

(b) Gender disparities in mean sentence length will decrease over time. Female defendants will be less likely to receive as long a mean sentence as male defendants, but these differences will converge over time.

Hypothesis 3: Disparities attributable to the exclusive influence of specific extralegal factors on the decision to grant defendants a judicial downward departure should decrease over the eleven years in the study period as the Guidelines become more institutionalized.

(a) Racial and ethnic disparities in the judicial downward departure rate will decrease over time. White defendants will be more likely to receive downward departures than Hispanic defendants, who in turn, will be more likely to receive downward departures than black defendants, but these differences will converge over time.

(b) Gender disparities in the judicial downward departure rate will decrease over time. Female defendants will be more likely to receive downward departures than male defendants, but these differences will converge over time.

The next hypothesis is derived from studies of courtroom working groups, wherein the theory of courtroom efficiency, with its primary emphasis on efficiently and smoothly managing courtroom caseloads, comes into play. This efficiency theory

postulates that offenders convicted through a trial proceeding will receive more severe sentences. Likewise, the focal concerns perspective would indicate that offenders who are convicted at trial show a sign of an explicit lack of remorse, leading to increased judicial attributions of offender blameworthiness, dangerousness, and community risk. Therefore, both organizational efficiency theory and the focal concerns perspective are used as a basis for the next hypothesis.

Hypothesis 4: The type of disposition will have a significant independent effect on the sentencing outcome. Specifically, the sentencing outcomes of those defendants who are convicted by trial will be significantly different than defendants who plead guilty, and any significant differences will decrease over the study period as the Guidelines become more institutionalized.

(a) Defendants who are convicted by trial will be more likely to receive sentences of incarceration (if located in Zones A or B) than defendants who plead guilty. These differences will become non-significant over time.

(b) Defendants who are convicted by trial will be more likely to receive a longer mean sentence length, when incarcerated, than defendants who plead guilty. These differences will become non-significant over time.

(c) Defendants who are convicted by trial will be less likely to receive judicial downward departures than defendants who plead guilty. These differences will become non-significant over time.

The fifth hypothesis is predicated on attribution theory, suggesting that the punishment decision will be affected by the judge's perception of the characteristics of individuals who engage in a certain type of illegal activity, for example drug trafficking or illegal immigration. These stereotypes surrounding the characteristics of the people based on the offense for which they are convicted will be applied generally to defendants as a group, superseding the degree of seriousness already contained within the Guidelines. Hence, the type of crime will have an impact on the sentencing decision independent of the final offense category and presumptive sentence.

Hypothesis 5: The type of offense conduct will exert a significant effect on the sentencing outcome independent of the final offense level. Specifically, the type of offense for which the defendant is sentenced will exert an exclusive influence, but this influence will decrease over the study period as the Guidelines become institutionalized.

(a) The offense type category will be significantly correlated with the likelihood of a defendant receiving a sentence of incarceration (if located in Zone A or Zone B). These differences will become non-significant over time.

(b) The offense type category will be significantly correlated with the likelihood of receiving an increased or decreased mean sentence length, when incarcerated. These differences will become non-significant over time.

(c) The offense type category will be significantly correlated with the likelihood of a defendant receiving a judicial downward departure. These differences will become non-significant over time.

The last two hypotheses are formulated around predictions of the time and place of sentencing. They are derived from theoretical work on organizational dynamics and courtroom workgroup interactions. This theoretical framework postulates that sentencing practices will vary across courts owing to varying norms and varying priorities on different organizational goals. In particular, caseload composition and pressure exerted by trial rates or other external influences such as pressure from the politicians in Congress or perceived public outrage at a particularly egregious crime, which often varies from year to year, can influence the sentencing outcome. For these reasons, sentencing decisions, and the outcomes they engender, will vary from place to place and from year to year.

Over time, the Sentencing Guidelines should become more widely accepted and standardized throughout the federal circuits. Thus, the inequity in sentencing outcomes between district courts should dissipate. Likewise, barring any major changes to the Guidelines that could offset the drive toward uniformity, disparities in sentencing outcomes for similarly-situated defendants arising from the location and time of sentencing should become narrower with each passing year.

Hypothesis 6: The judicial district court where the defendant is sentenced will have a significant effect on the sentencing outcome. Furthermore, any significant disparity attributable to the geographic location of the district court will decrease over the study period as the Guidelines become institutionalized.

(a) The district court location will be significantly correlated with the likelihood of a defendant receiving a sentence of incarceration (if located in Zone A or Zone B). These differences will become non-significant over time.

(b) The district court location will be significantly correlated with the likelihood of receiving an increased or decreased mean sentence length, when incarcerated. These differences will become non-significant over time.

(c) The district court location will be significantly correlated with the likelihood of a defendant receiving a judicial downward departure. These differences will become non-significant over time.

Hypothesis 7: The fiscal year in which the defendant is sentenced will exert a significant influence on the sentencing outcome independent of all other variables. This effect will decrease over time as the Guidelines become institutionalized.

(a) The fiscal year will be significantly correlated with the likelihood of a defendant receiving a sentence of incarceration (if located in Zones A or B) in the beginning of the study, but will decrease at the end of the study.

(b) The fiscal year will be significantly correlated with the likelihood of receiving an increased or decreased mean sentence length, when incarcerated, in the beginning of the study, but will decrease at the end of the study.

(c) The fiscal year will be significantly correlated with the likelihood of a defendant receiving a judicial downward departure in the beginning of the study, but will decrease at the end of the study.

The purpose behind the promulgation of the Federal Sentencing Guidelines was to establish proportionate punishments for similar crimes and similar defendants (U.S. Sentencing Commission, 1991). The Guidelines were developed under the auspices of appropriate incapacitation so that the convicted offenders who posed the greatest threat for committing future offenses would be prevented from doing so. The question, then, is whether or not the goal of uniformity through sentencing reform as defined in the SRA have been achieved. A multivariate analysis of sentencing data over a longitudinal time frame should promote a more definitive answer as to whether Sentencing Guidelines, by limiting judicial discretion, have reduced unwarranted disparity and created a better system for achieving justice.

Indeed, it is incumbent upon the research community to determine the extent to which the Sentencing Guidelines have been successfully implemented. Success in this context refers to both the process of measuring the amount of adherence to the Guidelines (through the examination of both within-range sentences and departure sentences) and the resulting outcome of decreased disparity in sentencing outcomes under the Guidelines (through the examination of sentencing outcomes for similarly-situated offenders). The present study proposes to add to the growing body of research findings through an inclusive and comprehensive study of federal sentencing data that examines differences in gender, race, and ethnicity for convicted federal defendants over eleven years of sentencing outcomes. Its findings should assist in moving toward a more definitive conclusion of the feasibility of limiting judicial discretion while balancing unwarranted disparity in sentencing outcomes under the Federal Sentencing Guidelines.

CHAPTER V. DATA AND METHODS

Case Files of Convicted Federal Offenders

After a defendant is convicted and sentenced in a federal district court, a file copy containing all documents pertaining to sentencing is forwarded to the Monitoring Unit of the U.S. Sentencing Commission. Upon arrival in the Monitoring Unit, each file is assigned its own unique Commission identification number with which it is thereafter identified.[1] The documents in the file (excluding sealed documents) are gleaned for information, which is then coded and entered into the annual fiscal year database. For each fiscal year, the Commission creates a data set in order to monitor Guideline compliance in the federal court system (Hebert, 1997). Quality control procedures have been established at the Commission to ensure the integrity of the data entering the Commission's database systems.

Not every file received by the Commission contains the exact same documents, but they are similar enough to extract much of the pertinent information. This fact is significant to research because there are virtually no variables in the Commission's data sets that do not contain some missing information for some cases. Missing data can never be entirely accounted for, but it is much easier to extrapolate from the data when the complete population of convicted federal offenders is available rather than a sample. The advantage to the Commission's data sets is that they contain the entire universe of convicted federal offenders.

Most case files received by the Monitoring Unit of the Commission contain a combination of court documents. For example, some files may contain an indictment while others may contain an information due to regional differences in criminal justice

system practices for charging documents. In cases where plea bargain agreements were reached as part of the sentencing process, these documents are also commonly included. In addition, case files will generally include the pre-sentence investigation report, a judgment and commitment order, and a statement of reasons document. Additional documents may include amended judgments or orders that change a sentence. Finally, documents regarding appeals might also be in the file.

Practically every file contains a pre-sentence investigation report (PSR) prepared by the district's corresponding probation office for the judge. It is frequently the largest document and contains the majority of information that is coded into the database. The PSR contains standard chapters of information concerning the defendant's conduct relating to the crime of conviction, personal history and current circumstances of the defendant, his/her criminal history, and the available sentencing options. The report is primarily based upon an interview with the offender, a review of the prosecutor's files, comments by the parties, and, in some instances, meetings with investigative agents (Farabee, 1998). A federal probation officer relies on the convicted offender to be forthcoming with much of the information required in the PSR, and also to direct the officer to other individuals and sources that will likewise offer information in a timely manner. Since much of the information is dependant upon the cooperation of the defendant, the depth and breadth of the PSR varies from case to case.

If the Commission's annual databases were to be viewed in the context of a lifecycle, it would be highly dynamic. Hardly a year passes without some minor modifications to the variables being collected, and some years have undergone extreme changes. These changes add another dimension to the complexity in studying trends in

sentencing patterns over time. The majority of these changes have resulted in an expansion of the number of variables being collected in the database. For example, earlier databases collected information on the convicted offender's unique statutes of conviction. There were a maximum of ten fields. Later, it was recognized that ten fields were not enough so they were expanded to seventeen. Again, a few years later, the advance of technology assisted the recognition that there should not be a limit and extended the fields to open as demanded by the needs of each individual case file.

Another reason for expanding the number of fields was to gather greater detail about the characteristics of the convicted defendants. The original databases collected demographic characteristics similar to other federal agencies. The defendant's race was simply categorized as "White," "Black," or "Other." The variable to capture ethnicity of Hispanic defendants was completely separate. It was not until later that the two variables were merged into a new third variable that contained all the categories for race and ethnicity. In subsequent years, more variables of interest were added, such as the type of defense counsel used by the defendant as well as the defendant's marital status.

The number of variables in the Commission's data sets has swelled to more than five hundred. Some of these additional variables are the result of complex variables being recoded into dichotomous variables. Others have been added to meet the needs of capturing data on offenders sentenced under new amendments to the Guidelines as directed by the U.S. Congress. For example, when additional enhancements were added to punish technology offenders who encrypted evidence of their crimes on their computers, a new variable was added to capture any offenders sentenced under this new amendment.

At the same time, the source documents limit the breadth of the Commission's data sets by virtue of the fact that they are legal documents prepared by the courts to sentence convicted offenders and justify those sentences to appellate courts. The court documents were not designed as data collection tools for the purpose of conducting research and analysis. For example, it would be extremely helpful to research regarding convicted sex offenders to document whether they were victims of similar crimes themselves. However, the probation officers who write the pre-sentence reports are not required to gather this information in the defendant's personal history. Hence, these types of details are seldom available. For certain fiscal years, the Commission has attempted to code the pre-sentence reports to determine the frequency of alcohol and drug involvement in sexual assault crimes, but this information is frequently missing as well. Research on sentencing outcomes of offenders in federal courts is therefore bounded by the data that currently exists. It is very complete in some areas, but still remains deficient in other important areas.

One example of this deficiency is the inability to identify the sentencing judge to isolate their individual characteristics. Every federal judge is assigned a unique permanent four-digit identification number by the U.S. Sentencing Commission. The judge's name and identification number are entered into the Commission's annual databases along with the case information for each case file. However, in order to protect the privacy and anonymity of the federal bench, these variables are withheld from purview when the data sets are released into the public domain. This decisive omission in the Commission's public data sets makes it impossible to analyze the effects between

different federal judges and their exercise of discretion when sentencing offenders under the Sentencing Guidelines (Payne, 1997; Stith and Cabranes, 1998).

The question of interjudge variation will remain unanswerable until identifying information is appended to the federal case-level data. Pertinent information such as the judge's gender, age, race/ethnicity, caseload, and time on the bench is not even gathered by the Commission. Additional data collection might also include the political party of the president who nominated the judge, and whether the judge's prior legal employment experience included work as a prosecutor in a criminal court or as a public or private defense attorney. Until the Commission compiles this crucial data and provides them to the public for purposes of study, this vein of research will remain at a standstill (Kautt, 2002). Therefore, the opportunity to study differences in sentencing practices among federal judges is not currently possible. Perhaps the Commission will see the value of such research in the future.

Sentencing Guidelines Data

The data for this study were collected by the Monitoring Unit of the United States Sentencing Commission located in Washington, D.C. The Commission's Monitoring Unit collects case files sent to them from all the U.S. district courts on defendants convicted and sentenced in the U.S. federal courts. The Commission also receives additional data on appeals from the circuit courts as they occur. The data are collected and coded from documentation submitted by federal probation officers and judicial officers of the federal courts. Therefore, the data in the current study are derived from the universe of federal criminal cases in the Commission's data sets and are restricted to what is included in these official documents.

The Commission allows unidentifiable sentencing data to be released and disseminated into the public domain through annual fiscal year data sets. These data sets are maintained by the Bureau of Justice Statistics and the Urban Institute through the Federal Justice Statistics Resource Center. The data in this repository are retrievable through use of the World Wide Web. This internet website allows registered users to download data sets, codebooks, and other types of pertinent information. The data sets contain all publicly available information on convicted offenders who are sentenced under the Sentencing Guidelines in the federal criminal justice system. Offenders whose cases were dismissed or declined for prosecution are not included in this data set since they were not convicted or sentenced under the Guidelines.

The Commission's data sets have a high degree of accuracy and integrity. The data collection and storage protocols also serve to enhance the overall reliability of the data. When a case file arrives at the Monitoring Unit, the data are coded directly from the documents submitted by the district sentencing courts. As the number of files has increased over the years, the period between receipt and the time- and labor-intensive task of data input has increased. Notwithstanding this increased lag time to create a full fiscal year data set, the Commission has established consistent methods for extracting pertinent information contained in the submitted case file documents. The data entering the Commission's databases are cleaned and checked through a process involving multiple stages and numerous personnel. Additionally, the data are verified through the use of computer programs designed to identify illogical variable values and flag those inconsistencies for reconsideration. These edits are reviewed and, when necessary,

corrected. The result of these data cleaning and edit checking procedures is a data set with strong reliability and validity.

Certainly, the Commission's data sets are also incredibly complex. In trying to capture all pertinent information from the case file documents, the Commission has created an immense database containing numerous sophisticated variables that are difficult to interpret, even for researchers with prior knowledge or experience in federal sentencing practice. For example, annual amendments to the Guidelines have frequently resulted in a re-ordering of special offense characteristics, or the addition or deletion of others, resulting in changes to how the data are captured by static variables. The scope of the data sets continues to increase as the Commission attempts to capture an ever larger proportion of foreseeable relevant case characteristics, a trend which appears to have no limits. As such, these data sets "represent the richest source of information that have ever been assembled on federal crimes, federal offenders, and sentences imposed" (U.S. Sentencing Commission, 2004, p. xi).

The data sets selected for this study include fiscal years 1993 to 2003. These eleven fiscal years were chosen for both substantive and empirical reasons. The primary substantive reason was the attrition of the Commissioners. By the early 1990s, most of the original Commissioners had left or were in the process of leaving the Commission. The first chair of the Commission, Judge William W. Wilkins, Jr. served from 1985 to 1994. After his term expired, a new chair, Judge Richard P. Conaboy, was appointed to lead a new set of Commissioners and served from 1994 to 1998. After his tenure, Judge Diana E. Murphy was appointed to be the chair and served from 1999 to 2004. Therefore, this data set represents the sentencing outcomes of offenders under the tenure

of the second and third sets of Commissioners rather than the original Commissioners. Moreover, by the time the fiscal year 1993 data set was collected, most of the controversies reflecting the struggle between the Commission and the federal judiciary about how and when to apply the Guidelines were resolved and the application of the Guidelines at sentencing had become standardized throughout the system of federal district and circuit courts.

The primary empirical reason for choosing the data set comprising these eleven fiscal years is that "sentencing year" will be considered as a variable in the analysis to determine the extent of variation in sentencing, if any, over time. Also, while the first few years of sentencing data have been extensively analyzed in a limited number of studies, more recent fiscal year data sets have not yet been so thoroughly analyzed. The fiscal year 2003 data set was the most recent data set available at the commencement of this study. The data were chosen with the most recent fiscal year data set available and then going back eleven years. At a minimum, a decade of sentencing data should begin to answer the question of how disparity has changed over time. Sentencing Commission data sets from 1989 through 1992 were not included as part of this longitudinal study because the data from these first few years are not extensive as successive years. They include a portion of cases sentenced under the older indeterminate (pre-Guidelines) system. Less than half of the federal criminal cases were sentenced under the Guidelines in 1991-1992 (Albonetti, 1997). The fiscal year 1993 data set is the first year of full implementation of the Guidelines across the 94 federal district courts (Steffensmeier and DeMuth, 2000). These early data sets also lack some important variables that were collected in later years.

The federal criminal justice system processes a different mix of criminal defendants than is commonly seen in state and local court systems. For example, crimes committed on national parks and forests and on Native American reservations fall within the jurisdiction of the federal court system. Drug trafficking offenses have comprised the largest portion of the federal criminal docket for over three decades (U.S. Sentencing Commission, 2004). The most frequently applied Guidelines have remained surprisingly constant over the past decade, and they comprise the vast majority of all federal criminal court cases (Maxfield, 2001). More than 85 percent of federal criminal cases fall into these categories: (1) drug trafficking offenses, (2) fraud and deceit offenses, (3) firearms offenses, (4) larceny, embezzlement and theft offenses, (5) robbery offenses, (6) counterfeiting offenses, (7) unlawful alien smuggling offenses, (8) unlawfully entering the U.S., (9) fraudulently acquiring citizenship documents offenses, and (10) money laundering offenses. The remaining ten to fifteen percent of cases each year are comprised of various crimes ranging from crimes as serious as homicide to less serious crimes such as illegal hunting of wildlife on national parks and forest lands. This study will analyze the sentencing outcome by the presumptive sentence, the final offense level (FOL), and the specific type of offense in order to capture the seriousness of the offense conduct. The final offense level will reflect the inclusion of both mitigating and aggravating sentencing enhancements that commonly change the perceived seriousness of a specific crime type.

This comprehensive study of federal sentencing outcomes is composed of a number of attributes that make its character unique in both scope and perspective. The study will include both males and females, U.S. citizens and non-U.S. Citizens, and the

three most prevalent racial and ethnic categories of white, black, and Hispanic. The study will include all offenses of conviction and include all the federal district courts in all of the federal circuits within the jurisdiction of the United States. Finally, it will cover eleven years of data gathered by the Sentencing Commission, from fiscal years 1993 through 2003.

The number of criminal case files received and coded by the Commission has increased substantially during the eleven years from fiscal year 1993 to fiscal year 2003. The data set for fiscal year 2003 is about two-thirds larger than the data set from fiscal year 1993. It should be noted that the Commission's databases reflect only those cases for which appropriate documentation was accordingly forwarded to them by the individual district courts. Reporting problems among a few districts as well as reduced levels of cooperation in the initial years following the promulgation of the Sentencing Guidelines certainly contributed to this trend. Thus, these totals should not be construed as an accurate representation of the overall number of convicted offenders processed annually through the federal court system. Up until the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today [PROTECT] Act passed by the U.S. Congress in 2003 that created statutory documentation submission requirements, a memorandum of understanding (MOU) was the only existing mechanism whereby the district courts were asked to respond to the Sentencing Commission's request to send copies of pertinent sentencing documents to them. The Commission also sends out annual letters to the district courts to request missing case file documents that are listed concurrently in a database maintained by the Administrative Office of the United States Courts. Each case file received by the Commission contains data on a defendant who

was convicted and sentenced in a federal circuit court. The number of cases sentenced each fiscal year under the Sentencing Guidelines and received by the Sentencing Commission is represented in the following table.

Fiscal Year	Number of Cases
1990	29,011
1991	33,419
1992	38,258
1993	42,107
1994	39,971
1995	38,500
1996	42,436
1997	48,848
1998	50,754
1999	55,557
2000	59,846
2001	59,897
2002	64,366
2003	70,258

Independent Variables

The independent variables selected for the analysis consist of factors that encompass characteristics of the offender, characteristics of the offense(s) of conviction, and characteristics of the sentencing court. These causal, or control, variables have been shown to be important in previous quantitative research studies for predicting and explaining sentencing outcomes in both federal and state courts (Zatz, 2000; Spohn, 2000). The current analysis will measure the predictive influence of these variables on the determination of the final sentencing outcome. Summary statistics (number of cases, mean, standard deviation, and minimum and maximum values) for the variables used in the analysis are displayed in Table 6.1.

An array of variables was chosen from the dataset to measure the influence of the defendant's personal characteristics on the sentencing outcome. The study focuses on sentencing outcomes for both male and female convicted offenders so gender will be an important independent variable. The defendant's gender is captured by a nominal categorical variable named MONSEX and coded in the most parsimonious manner: 0 for males and 1 for females.

A variable that measures racial and ethnic categories will likewise be included. The defendant's racial and ethnic category is captured by a nominal categorical variable named NEWRACE and coded 0 for whites, 1 for blacks, 2 for Hispanics, and 3 for all other races. This variable is actually created from the combination of two variables, one for race and one for Hispanic ethnicity. To merge these two variables, the dichotomous Hispanic ethnicity (yes/no) variable was extracted for all Hispanic defendants, followed by a procedure whereby the racial category was paired with this new combination and replaced by it if the defendant was designated as being of Hispanic ethnic origin. Using this procedure, the NEWRACE variable was replicated for the fiscal years where this variable was available (1997-2002) and created for the first time where this variable was not provided in the original fiscal year data sets (1993-1996).

A citizenship variable will be used since the data sets contain sentencing outcomes for both citizens and non-U.S. citizens. The defendant's citizenship status is captured by a nominal categorical variable named NEWCIT and coded 0 for U.S. citizens and 1 for non-U.S. citizens. This dichotomous variable is derived from the original nominal categorical citizenship variable that identifies the distinct alien status of each defendant through the use of more than one non-U.S. citizen variables. The NEWCIT

variable just combines all the non-U.S. citizen categories into one group in order to facilitate the use of the citizenship status variable for data analysis purposes.

The defendant's age at sentencing is captured by a continuous variable named AGE that is coded by the Commission to reflect the exact age of the defendant at sentencing. This variable ranges from age 16 to 102. A second continuous age variable, AGE_SQRD, was created for the present study. It is the value of age squared and will be included in the multivariate analysis.

The defendant's education is captured by an ordinal categorical variable named NEWEDUC and coded into four categories, each one with a greater level of educational achievement. The first (lowest) category groups offenders who range from a complete absence of any formal education to some education, but excludes graduation. The second category groups offenders who have obtained a high school diploma or G.E.D certificate. The third category groups offenders who have received some education at a college or university. The fourth category groups offenders who have graduated from a college or university, including both undergraduate and graduate degrees. This variable is derived from the original continuous ratio education variable that captures the actual number of years of education acquired by the offender prior to sentencing. Thus, this new education variable collapses the original variable's categories into more meaningful categories for data analysis purposes.

The number of dependents for whom the defendant is responsible is captured in an ordinal categorical variable created for the current study and named NUMDEPEN2 and recoded into a dummy variable to represent defendants with no dependents and defendants with dependents. This variable was derived from the original continuous ratio

variable used by the Commission to capture the defendant's number of children, which ranged from 0 to 96, and was collapsed into a dichotomous variable for data analysis purposes.

To capture the predictive influence of offense characteristics, independent variables that describe the type of offense, the counts of conviction, the offense level seriousness score, the presumptive sentences, adjustments for role in the offense, and other aggravating and mitigating circumstances will be included. The type of offense will be categorized in terms of the most serious count of conviction. Albonetti (2003) suggested that offense aggregation can result in model misspecification. For example, she claims that it is incorrect to place all types of drug offenses under the same umbrella. Instead, a dummy variable for the Guideline offense for which the defendant is sentenced should be included in the model equation, thereby capturing the offense-specific and relevant conduct structure of the Federal Sentencing Guidelines. Equations which exclude the legally relevant offense characteristics can produce misspecified models of sentencing resulting in inaccurate estimates of the significance of coefficients.

At the same time, the number of Guideline computations will be taken into account for multiple counts of conviction. This continuous variable, NOCOUNTS, ranges from 1 to 495, but almost eighty percent of the cases only have one count. Therefore, this variable was recoded into a dichotomous variable representing those defendants with one count of conviction and those defendants who have more than one count of conviction for this particular analysis.

The defendant's final criminal history score is captured by a continuous ratio variable named XCRHISSR and coded 1 through 6 to match the corresponding six

available criminal history categories that are aligned along the abscissa of the sentencing table. This variable is coded from the 'statement of reasons' document written by the judge to explain and justify the sentence given to the convicted offender. The first (lowest) category corresponds with a criminal history category score of 1. These categories increase until they reach the sixth (highest) category, which signifies the defendant's accumulated criminal history points place him or her in the highest possible criminal history category.

The defendant's final offense level is also captured by a continuous ratio variable. It is named XFOLSOR and coded 1 through 60 to reflect the corresponding final offense level score assigned to the offense of conviction. This variable depicts the offense level that is aligned along the ordinate side of the sentencing table. This variable also originates from the 'statement of reasons' document. The first (lowest) category corresponds with a final offense level score of 1. These categories increase until they reach the 43rd (highest) offense level category. Any offense level scores above 43 are truncated into this topmost level.

The presumptive sentence was captured through the creation of a variable (PRESUMP) that captures the number of months at the minimum point of the Guideline penalty range of the sentencing table where the defendant's final offense level score and final criminal history category intersect. The majority of sentences that are within the Guideline's penalty ranges are at the minimum amount, although this proportion fluctuates by offense type. The presumptive sentence variable is a continuous ratio variable and is coded to correspond to the appropriate penalty, an amount ranging from 0 months to 470 months (life sentence).

Finally, independent variables that describe the characteristics of the court and the type of disposition will be included. These variables will capture the district and circuit where the court is located, the type of disposition or plea, and the year of sentencing. These variables will be used to predict the effects of courtroom characteristics on sentencing outcomes under the Federal Sentencing Guidelines.

Whether the defendant pled guilty or was convicted by trial was captured by a nominal categorical variable named NEWCNVTN and coded 0 for pleading guilty and 1 for conviction by trial. This dichotomous variable was derived from another nominal categorical variable which has five different categories to describe the defendant's disposition. The new variable collapses both guilty pleas and pleas of Nolo Contendere within the guilty plea category. It also collapses both trials by jury and bench trials into the conviction by trial category. The fifth category of the earlier variable, which captures data on defendants that both plead guilty to one or more charges and are convicted in a trial for one or more other charges (when the defendant is charged with more than one count), is categorized as missing in the new dichotomous variable since it does not fit exclusively into either category.

The circuit court where the defendant was sentenced is captured by a nominal categorical variable named MONCIRC and coded 0 through 11 to reflect each of the federal circuit courts (including the D.C. Circuit Court). This variable had no missing values. Table 2 of Appendix A contains a list of the federal circuit courts by district and state, and the number of authorized judgeships for each circuit.

The district court where the defendant was sentenced is captured by a nominal categorical variable named CIRCDIST and coded 1 through 94 to reflect each of the 94

district courts located throughout the U.S. federal court's jurisdiction.[2] This variable codes the district courts in the order that they appear in the Commission's Annual Report published and disseminated to summarize each fiscal year's sentencing data. In this manner, when more than one district court is located within the same state, they are grouped together in sequential order. This variable is also organized sequentially by circuit court. In other words, districts coded 2 through 6 comprise the first circuit court; districts coded 7 through 12 comprise the second circuit court; districts coded 13 through 18 comprise the third circuit court; districts coded 19 through 27 comprise the fourth circuit court; districts coded 28 through 36 comprise the fifth circuit court, etc.

The year of sentencing is captured through the creation of a categorical ordinal variable named SENTYEAR and coded 1 through 11 to represent the eleven fiscal years contained in the study. It was created by the researcher rather than provided in the original Commission data sets. This variable was derived from the date of sentencing variable listed in each fiscal year data set in order to maintain the integrity and unique characteristics of each case file when all the data sets were merged together into one large data set. This variable facilitates a longitudinal analysis of the data by allowing each fiscal year to be grouped separately and independently from the other fiscal year case files. Thus, this variable will be useful in predicting and measuring the extent of differences in sentencing outcomes over time.

There are two additional independent variables that would have been important to include in the study. These are the defendant's type of defense counsel and marital status. The type of defense counsel is captured by a nominal categorical variable named DEFCONSL and codes the type of legal representation used by the defendant during the

court process. Unfortunately, this variable was only included in the data sets beginning in fiscal year 1996. The defendant's marital status is captured by a nominal categorical variable named MARRIED and coded into six categories to describe the defendant's current domestic status at sentencing. This variable was only available beginning in fiscal year 1999. Because the main purpose of this study involves the measurement of differences in sentencing outcomes over time, it is not useful to include variables that were not available during substantial portions of time covered in the study. Perhaps these variables can be included in future studies that are not conditioned by time or where the data sets only begin in later years.

Dependent Variables

At sentencing, the federal district court judge must make three major decisions. The first sentencing decision is whether to incarcerate the convicted offender, commonly termed the "in/out" decision. Whether incarceration is an option or a requirement depends upon the Zone of the sentencing table where the offender's final offense level and criminal history category intersect. The second sentencing decision is the determination of the length of the sentence, also known as the "length-of-term" decision. The Guidelines prescribe a range of months for each offense level, and the judge must determine the appropriate sentence within the penalty range. The third sentencing decision is whether extraordinary circumstances exist to warrant a departure outside of the prescribed Guidelines penalty range. This decision is the departure decision, and the judge can depart upward or downward from the Guideline's range depending on mitigating or aggravating circumstances not adequately taken into account by the

Guideline's special offense characteristics or other Guidelines Manual chapter adjustments.

The dependent or outcome variables in this study are those that depict the sentencing outcome in the federal criminal justice system. The first dependent variable will portray the first sentencing decision. This variable was created to be used in circumstances where the availability of non-prison sentences is relevant. In other words, only those defendants who are located in Zones A and B of the sentencing table are eligible for non-prison sentences. It is captured by a nominal categorical variable named INOUT and coded 0 for a sentence of incarceration or 1 for a non-incarceration sentence, thus indicating whether or not the defendant received a prison sentence. It will capture the dichotomous in/out decision. Logistic regression is the preferred method for developing a prediction equation when the outcome variable is dichotomous and will therefore be the method for testing predictions according to this outcome.

Unlike the states' criminal justice systems which provide two types of incarceration, namely jails and prisons, and they divide their offender populations between these institutions by crime severity and sentence length, the federal system offers only one type of incarceration, the federal penitentiary. Thus, the assertion that offenders sentenced to prison are qualitatively different than those offenders who receive a jail sentence and should not be combined into the same incarceration outcome is not an issue when analyzing federal data on convicted offenders (Holleran and Spohn, 2004). However, the federal level data do combine intermediate sanctions with incarceration sentences because they are frequently imposed in combination with one another, and such

aggregation can potentially engender mistaken conclusions about the correlates of sentencing decisions.

The second dependent variable portrays the second sentencing decision and depicts the length of the term of incarceration. Specifically, for those convicted offenders who receive a sentence of incarceration, how long will be their incarceration. This will be characterized in terms of the number of months to which the individual is sentenced. It is captured by a continuous ratio variable named TOTPRISN and ranges from 0 to 469 months of imprisonment. Life imprisonment is coded as 470 months, and any sentences that were longer than this amount were truncated down to equal a life sentence. Death penalty sentences are not included in this variable's range of valid sentence length values.

The outcome of sentence length for defendants who receive a prison sentence will be tested through the use of ordinary least squares (OLS) regression. Commonly, log transformations of sentence length are performed in this type of analysis when a distribution is highly skewed to avoid violating the assumptions of normality (Albonetti, 1997). The current study does not apply this transformation to the dependent variable of sentence length to prevent complicating the model unnecessarily and to facilitate ease of model interpretation.

The third dependent variable illustrates the third sentencing decision of whether the judge grants the defendant a departure outside of the Guideline's penalty range. This decision is captured by a nominal categorical variable called DEPART and coded 0 for no departures, 1 for upward departures, 2 for downward departures, or 3 for substantial assistance departures. Beginning with the fiscal year 2003 data set, four additional categories of possible combinations of departures were captured and coded, as well as

two additional departure variables that collapse the departure categories into two or three categories for annual reporting purposes. This new coding scheme necessitated the recoding of 232 case files in the fiscal year 2003 data set to align with the original codes of the earlier fiscal year data sets. Defendants whose departure status was coded as inapplicable or missing will be excluded from the departure analysis.

Since both judicial downward departures and substantial assistance downward departures grant leniency to the defendant by resulting in a sentence that is below the prescribed Guideline penalty range, the question might be raised as to why this study is only focusing on the former and excluding the latter from the analysis. Perhaps this is because it appears on the surface that these two types of downward departures are just different means to the same end. One court might prefer to rely on judicial downward departures while another court might influence the prosecution by exerting pressure to get the case rapidly adjudicated and, therefore, rely more on substantial assistance departures to achieve the same goal of a reduction in sentence length. However, there are significant differences in both the means and the end result of judicial downward departures and substantial assistance departures, enough for even the Commission to keep them separate as they study not only the sentencing process, but also the appeals process. After all, many appeals stem from the departure decision.

Judicial downward departures are part of the overt transparent sentencing process that is governed by official policy, and they must be accompanied by a statement from the court outlining the reason(s) for the departure, and be justified in a written opinion that becomes part of the case record. The opinion in the case record must be able to withstand the rigorous scrutiny of higher courts of appeals. Moreover, the sentence

reduction granted in judicial downward departures cannot fall below a statutory minimum sentence (Steffensmeier and DeMuth, 2000).

On the other hand, substantial assistance departures must originate from a motion filed by the prosecution. As described by Kramer and Maxfield (1998), the substantial assistance departure constitutes a unilateral prosecutorial decision that is not subject to challenge by the defense and is not reviewable by the court. Hence, this type of departure is part of the covert, invisible process that occurs in meetings behind closed doors, and its motion to the court does not require the rigorous standard for justification and appellate review as do judicial downward departures. The prosecution cannot appeal a substantial assistance departure. Most important of all, substantial assistance departures *can* fall below the statutory minimum sentence. In effect, a substantial assistance departure can do more than supplant the Guideline range. It can turn a sentence which requires time in prison into a sentence which involves no prison time at all.

In their study of departures, Steffensmeier and DeMuth (2000, p. 722) used the designations "judge-controlled downward departures" and "prosecutor-controlled downward departures" to distinguish between the two types of departures. In keeping with previous research, the current study will likewise keep separate the two types of downward departures. However, while Steffensmeier and DeMuth (2000) focused more on the outcomes of substantial assistance departures, this study will focus on outcomes that result from the use of judicial downward departures.

The argument can be made that the decision to exclude substantial assistance departures results in an incomplete picture of the departure outcome. For this reason, the current research is limited to offering an explanation for only one type of downward

departure—those that are identified as judge-initiated. The findings from this study should not be construed as asserting an overall generalized explanation for all types of departures by any means, but only for this small slice of the departure pie.

Similar to other research, this study will assess what factors influence the rate of downward departures, including the presumptive sentence, criminal history category, racial and ethnic categories, gender, age, citizenship, education, district court location, and guilty plea versus trial conviction. It will also measure the significance of these independent variables on the judicial downward departure rate across judicial districts over time. In order to test the effects of these independent variables on judicial downward departures, multinomial logistic regression will be used in the analysis.

Multinomial logistic regression is an extension of binary logistic regression. However, multinomial or polytomous logistic regression differs from binary regression in that it allows the categorical dependent variable to contain more than two categories. In this case, the categories are: no departure (control), upward departure, judicial downward departure, or substantial assistance departure. The assumptions of the multinomial logistic regression model, with the exception of the outcome variable following a multinomial (rather than a binomial) distribution, are identical to those of binary logistic regression. In SPSS syntax, this procedure is called "Nomreg."

When using binary logistic regression, a single odds ratio summarizes the outcome. When there are more than two outcome categories, however, ratios of the category probabilities can still describe the outcome, but additional ratios are required. Thus, multinomial logistic regression estimates a ratio based on the probability of each outcome category divided by the probability of the reference or baseline outcome

category. The most striking feature of the parameter estimates in this model is that there are three sets of parameters, each with its own intercept and coefficient estimates. As with ordinary and logistic regression, these coefficients are interpreted as estimates for the effect of an independent variable, controlling for the other variables in the equation.

The results of the multinomial regression model are similar to logistic regression in that they provide the estimated B coefficients and their standard errors, a test of significance based on the Wald statistic, and the exponentiated values of the estimated B coefficients (*Exp(B)*), along with their 95 percent confidence intervals. The multinomial logistic regression procedure uses a General Linear Model (GLM) coding scheme. Thus, for each categorical predictor, the last category value is made the reference category and the other coefficients for that predictor are interpreted as offsets from the reference category. Because of this, the coefficient of any other category can be interpreted as the change associated with shifting from the reference category to the category of interest, controlling for the other predictors.

In order to maintain continuity of reference categories between models, each of the categorical independent variables have been recoded for the multinomial analysis. For example, the gender variable is coded 0 for males and 1 for females. It is then recoded 0 for females and 1 for males for the multinomial analysis so that males remain as the reference category similar to that used in the Binomial Logistic and OLS models. This recoding allowed all of the models to have similar categories against which to draw comparisons and inferences.

Judicial downward departures are allowed to occur in all four zones of the Sentencing Guidelines table. Since defendants in every zone of the table received

judicial downward departures during the period encapsulated in this study, they are all included to gather the most comprehensive picture possible of this particular type of departure.[3] The departure is first and foremost about a decrease in offense levels. While it is possible to receive a sentence other than incarceration such as fines and/or probation for defendants located in offense levels one through eight with minimal criminal histories, the probability of receiving a non-incarceration sentence is greater for a defendant in the lowest levels, even within a zone where all the sentences range between zero and six months. It only makes sense that the lower the offense level, the greater the probability of receiving a sentence other than imprisonment. The same could be said for criminal history categories. The likelihood of a defendant whose offense level score is a one or two, but whose criminal history points place him in category five or six, is more likely to receive a more severe sentence than a similarly-situated defendant with little to no criminal history points. Thus, any savvy defense attorney would try to get his client into the lowest levels of Zone A.

Studies with Large Ns

It should be stressed that there is an important difference between the significance and the strength or importance of a relationship between variables. Even if there is only a very slight relationship between two variables, it may be a statistically significant one with a large sample size. Therefore, after establishing that a relationship exists between the independent and dependent variables, it is also important to examine the direction, magnitude, and strength of that relationship.

In this study, the strength of a relationship between the dependent and independent variables will be analyzed in two ways. First, the strength can be judged by examining the spread of data points around the regression line and determining how well the data cluster around it using regression techniques. The closer the data points are to the regression line, the stronger the correlation. Second, the prediction table that is generated with the models can allow for an examination of an improvement or deterioration in predicting the sentencing outcome, as well as the change in prediction rates within each category of the predicted outcome. By reducing the amount of prediction error, the interpretations of association between the variables of interest will be reliable and will serve as accurate estimates of the relationship.

TABLE 5.1: DATA VARIABLE TABLE

AGE	Range: 16 to 102	Indicates the defendant's age at the time of sentencing, as determined by the date of birth variable.
CIRCDIST	Range: 1 thru 94	Indicates the judicial district where the defendant was sentenced. Recoded from USSC variable DISTRICT. NOTE: Each category was recoded (0,1) for the multivariate analyses.
CRIMETYPE	0 = Other Offenses 1 = Fraud, Deceit, and Counterfeiting Offenses 2 = Larceny, Embezzlement, Theft, & Money Laundering Offenses 3 = Immigration Offenses 4 = Drug Offenses 5 = Robbery and Firearms Offenses 6 = Missing	Primary Offense Type. Recoded from USSC variable OFFTYPE2 which contains 35 offense categories. NOTE: Each category was recoded (0,1) for the multivariate analyses.
DEPART	0 = No Departure 1 = Upward Departure 2 = Downward Departure 3 = Substantial Assistance Departure (§5K1.1)	Indicates defendant's departure status
INOUT	0 = Non-Incarceration 1 = Incarceration	Indicates if the defendant received a prison sentence. Limited to defendants located in Zones A & B of the sentencing table. (Original coding by the USSC was 0 for incarceration and 1 for non-incarceration.)
MONCIRC	Range: 0 thru 11	Indicates the judicial circuit where the defendant was sentenced. NOTE: Each category was recoded (0,1) for the multivariate analyses.
MONSEX	0 = Male 1 = Female 2 = Missing	Indicates the offender's gender.
NEWCIT	0 = U.S. Citizen 1 = Non U.S. Citizen (Includes Legal and Illegal Alien status) 2 = Missing	Citizenship of defendant. Recoded from USSC variable CITIZEN.

NEWCNVTN	0 = Plea 1 = Trial 2 = Missing	Indicates whether the case was settled by plea agreement or trial. Recoded from USSC variable DISPOSIT.
NEWEDUC	0 = Less than H.S. Graduate 1 = H.S. Graduate 2 = Some College 3 = College Graduate 4 = Missing	Highest level of education for the offender. Recoded from USSC variable EDUCATN. NOTE: Each category was recoded (0,1) for the multivariate analyses.
NEWRACE	0 = White 1 = Black 2 = Hispanic 3 = Other 4 = Missing	Race of defendant. Recoded from USSC variables MONRACE and HISPORIG. NOTE: Each category was recoded (0,1) for the multivariate analyses.
NOCOUNTS	1 = 1 count of conviction 2 = 2 or more counts 3 = Missing	Indicates the number of counts of conviction. Recoded from the original USSC continuous variable which ranged from 1 to 495.
NEW#DEPEN	0 = No dependents 1 = 1 to 96 dependents 2 = Missing	Number of dependents whom the offender supports. Recoded from USSC continuous variable NUMDEPEN which ranged from 1 to 96.
PRESUMPTIVE	Range: 0 to 470	Indicates the Presumptive sentence based on the minimum number of months contained in the range matching the defendant's final offense level & final criminal history category. (Not a USSC variable. Created for current study.)
SENTYEAR	Range: 1993 thru 2003	Indicates the fiscal year the defendant was sentenced and the case file was received by the USSC and entered into their database. (Not a USSC variable. Created for current study.)
TOTPRISN	Range: 1 thru 470	The number of months of imprisonment ordered for defendants sentenced to a term of incarceration. Sentences above 470 were truncated since 470 is tantamount to a life sentence.

XCRHISSR	Range: 1 thru 6	Defendant's final criminal history category (I-VI) as determined by the court.
XFOLSOR	Range: 1 thru 60	The final offense level as determined by the court.
ZONE	A = Zone A B = Zone B C = Zone C D = Zone D Z = Missing	Sentence table group which determines eligibility for probation and non-incarceration alternative sentences, as described in Guidelines Manual §5B1.1 and §5C1.1; Zone A is located at the top of the table for the least serious offenders, and they increase sequentially with offense seriousness so that Zone D is for the most serious offenders at the bottom of the table.

Research Design and Analysis

To analyze the U.S. Sentencing Commission data sets, it was necessary to match the variables from each fiscal year, in particular the dependent and independent variables of interest to the current study. This preliminary process involved the creation of a master variable list which showed the available variables in each fiscal year, if and when they were added or dropped from the data sets, and also whether the variable name was changed or modified. It is interesting to note that not all the same variables are released by the Commission each year.

For example, the variable containing information on the defendant's date of birth was excluded from the 1996 and 1997 main data sets. Also, a variable that the Commission created to recode the type of drug in offenses involving drugs (COMBDRG1) was only released in the fiscal year 1997 and 1998 data sets, even though the Commission used this variable name from fiscal year 1992 through 1998. Other examples include the variables capturing the Guidelines (GDLINE1 – GDLINE5) disappearing from the data sets after fiscal year 1998 while the variable capturing the number of Guideline computations (NOCOMP) only starts with fiscal year 1999.

A number of important variables begin to appear in the fiscal year 1997 data set, such as the variable that captures whether the defendant received a mandatory minimum sentence for a drug conviction (DRUGMIN), whether the defendant received a safety value reduction (SAFE), with what zone of the sentencing table the defendant's sentence corresponds (ZONE), variables describing where the sentence falls (DEQUART, RANGEPT, INRANGE), and other important sentencing factors like the sentence imposed variable (SENTIMP), the dichotomous variable to capture the incarceration

decision (PRISDUM), and the length of the incarceration sentence (SENTTOT and SENTTOT0).

Some examples of variable name changes are the variable name used to code the type of offense for which the defendant was convicted changing from OFFTYPE to MONOFFTP between fiscal years 1998 and 1999, the variable describing the defendant's type of defense counsel was changed from DEFCNSUL to DEFCONSL between fiscal years 1996 and 1997, and the safety value application variable was originally SAFETY when it was introduced in fiscal year 1997, but was changed to SAFE in fiscal year 1999. Subsequently, a new variable was introduced in fiscal year 2002 as SAFETY. Now, there are two variables to capture information on this Guideline application—SAFE and SAFETY.

In some cases, it was possible to create missing variables using the same methods as described in the Commission's codebook. For example, the age of the defendant at the time of his sentencing (AGE) was used by the Commission to group defendants into age categories using a separate grouping variable (YEARS). This recoding was accomplished for those fiscal years where the category or dichotomous variables were not readily available. This same method was used to recode educational attainment into education categories, race and Hispanic origin into one combined racial and ethnicity category, recoded variables for citizenship status categories, type of offense categories, type of conviction categories, type of drug categories, and criminal history categories.

After ensuring continuity across the fiscal years for each variable of interest selected for the current study, it became possible to perform the next necessary step in the analytical process, that is, to merge the eleven fiscal years into one large data set. In

order to retain the unique annual identity of each fiscal year data set, a variable was created to designate the fiscal year to which the case pertained. This variable, SENTYEAR, contains the year to which the case file belongs. For example, all fiscal year 1999 cases would be designated as 1999, fiscal year 2000 as 2000, and so forth. The creation of this variable allows for separate analysis of the data in each fiscal year as well as constructing the possibility for a temporal analysis of the data based on the fiscal year of sentencing as an independent variable.

The result of the merging procedure was an unprecedented data set containing all case files on convicted federal offenders collected by the Sentencing Commission from fiscal years 1993 through 2003, a total of 572,540 case file records. The unit of analysis is the individual case. Each case contains information on one convicted offender. Cases where the convicted offenders lack valid observations for necessary variables such as race, ethnicity, or gender will be excluded from the analysis. To increase predictive accuracy, the analysis measures both direct and indirect effects by looking at the predictive influence of individual variables and by testing the combined interaction effects of variables that have intersecting predictive influences.

This study is designed to estimate the extent to which a convicted offender who has the same criminal history score and offense seriousness score as any other convicted offender, and who is in the same federal district court, receives a different sentence owing to the influence of racial, ethnic, or gender factors and also to measure the change, if any, over time in the magnitude of these likelihood estimations. The sentencing outcomes will be examined in two contexts: overall and during each of the eleven fiscal years contained in the study to capture changes that occur over time. The sentencing outcome is

measured in three ways, namely the in/out decision, the length-of-term decision, and the departure decision. Certainly, the sentencing decision occurs in the final stages of criminal justice processing, and disparities may have already impacted the pool of offenders at earlier stages. This analysis, however, will focus exclusively on how federal district judges interpret the Sentencing Guidelines to determine appropriate sentences for convicted offenders after pleading guilty or being found guilty of violating the federal criminal statutory code. If differences exist, the findings from this study will be used as evidence to show that disparity continues to persist in the federal criminal justice system under the Sentencing Guidelines.

The data are analyzed using Logistic regression analyses, Ordinary Least Squares (OLS) regression analyses, and Multinomial logistic regression analyses. Because of the different levels of measurement ascribed to the nature of the dependent variables, different analytic procedures will be used to measure each outcome. OLS regression is a common method of choice to analyze length of sentence variables for defendants who received a sentence of incarceration because it is a continuous variable. Logistic regression analyses allow one to directly estimate the probability of an event occurring. In this case, it would be used to measure the likelihood of receiving a sentence of incarceration (in/out decision). Similarly, multinomial logistic regression will estimate the likelihood of receiving a downward departure relative to receiving no departure. The parameters of the logistic regression model are estimated using the maximum-likelihood estimation method. That is, the coefficients that make the data "most likely" are selected.

It will be especially significant in this analysis to determine the manner in which departures may generate disparity. As Mustard (2001, p. 308) pointed out, disparity

arising out of sentences which invoked departure adjustments can be made along both the "extensive" and "intensive" margins. In other words, one must examine not only who is more likely to receive departures, but also to measure how favorable these adjustments are compared to those groups who receive less favorable sentence reductions. The results of the proposed analyses should contribute to the determination of whether the Federal Sentencing Guidelines have been successful in balancing judicial discretion and unwarranted sentencing disparity to create a more equitable and just system of sentencing convicted federal offenders between fiscal years 1993 through 2003.

CHAPTER VI. DESCRIPTIVE AND BIVARIATE ANALYSIS

Descriptive Analyses of the Dependent and Independent Variables

The data set was first analyzed thoroughly using descriptive statistics to depict the characteristics of the key variables of interest and their interactions. The distributions of these variables were obtained through the frequency and cross tabulation functions within SPSS. These preliminary analyses are valuable because they provide important information about the variables in the data set and their associations with other significant variables. They provide the first glimpse of the distribution of gender, race, and ethnicity in sentencing outcomes for the decade of federal sentencing practice targeted for the current study. Lastly, they are useful in constructing the initial framework from which subsequent inferential statistical analyses will be derived.

Table 6.1 contains a complete list of both the continuous and categorical variables chosen for this study. This table shows overall distributions of all variables included in the models used to test the predictions. The most notable and relevant part of the table depicts the distribution of the gender, race, and ethnicity variables. In sum, of the 572,540 case files on convicted federal offenders received by the Sentencing Commission during fiscal years 1993 through 2003, the majority were male, and this distribution remained tremendously constant across all eleven fiscal years in the data set (see Table 6.2). When distributed by year, the racial and ethnic categories of convicted offenders shows that the number of white and black defendants have declined steadily throughout the study period, but the number of Hispanic defendants has steadily increased (see Table 6.3). Overall, white defendants comprised 33.1 percent, black defendants comprised 25.9

percent, and Hispanic defendants comprised 35.3 percent of the study cohort. These three major racial and ethnic groups of white, black, and Hispanic offenders will be the categories used to test for differences in sentencing outcomes owing to the influence of race and ethnicity as an extralegal characteristic in subsequent analyses.

The In/Out Incarceration Outcome

The in/out incarceration decision was captured by a dichotomous variable (INOUT) indicating whether or not the defendant received a prison sentence and pertained to defendants located in Zones A and B of the sentencing table and were sentenced within the Guideline's penalty ranges (N = 102,670). Among this subset of defendants sentenced between fiscal years 1993 and 2003 (see Table 6.4), 39.1 percent received a sentence of at least one month of incarceration (N = 40,139). The other 60.9 percent did not receive a prison sentence (N = 62,531).

As summarized in Table 6.5, slightly fewer than half of the male defendants (44.7 percent) in this subset received a prison sentence. Less than one quarter of the female defendants (24.4 percent) were sentenced to prison. When the in/out variable was distributed by racial and ethnic category, white defendants had the lowest percentage of incarceration sentences (24.8 percent), followed by black defendants (31.3 percent). Hispanic defendants, on the other hand, were sentenced to prison in far greater proportions (67.4 percent).

The differences in percentages between those defendants who pleaded guilty (39.3 percent) versus those who were adjudicated guilty by a trial proceeding (42.2 percent) who were sentenced to prison were not that different. The year of sentencing

demonstrated a steady upward trend in the percentage of defendants sentenced to prison over time (see Table 6.4). Fiscal year 1993 had the lowest percentage of defendants (28.2 percent) who received a prison sentence, but this percentage increased incrementally every year in the data set, until reaching a high of 50.4 percent in fiscal year 2003.

The vast majority of federal criminal offenses for which the most frequent Guidelines are constantly applied fall into less than a dozen categories. For the present study, these offenses were collapsed into the following six categories: drug offenses; fraud, deceit, and counterfeiting offenses; robbery and firearms offenses; larceny, embezzlement, theft, and money laundering offenses; immigration offenses; and other miscellaneous offenses. Among defendants located in Zones A and B and sentenced within the Guideline's range, who were sentenced for fraud, deceit, and counterfeiting offenses, 32.4% received a prison sentence (see Table 6.5). Only 20.4% of defendants sentenced for larceny, embezzlement, theft, and money laundering offenses received a prison sentence. The majority of defendants (78.7 percent) sentenced for immigration crimes received a prison sentence. A little more than one-third of defendants sentenced for drug offenses (38 percent) and robbery and firearms offenses (36.3 percent) received a prison sentence.

In addition, for both male and female offenders, the most common crime type category for which they were sentenced was for participation in drug offenses. The top three offense categories among males were drug offenses (42.0 percent), immigration offenses (16.4 percent), and fraud, deceit, and counterfeiting offenses (15.3 percent). Among female offenders, the top three offense categories were drug offenses (36.2 percent), fraud, deceit, and counterfeiting offenses (32.7 percent), and larceny,

embezzlement, theft, and money laundering offenses (14.9 percent). For women, then, the top two crime type categories comprise more than two-thirds of the offenses for which they were sentenced.

The location of the federal judicial court where the offender was sentenced is another key predictor variable in this analysis. The sentencing court's location is captured at both the district and circuit level. The twelve federal judicial circuits do not all handle the same amount of cases, owing to differences in the size of the geographic area and populations encompassed by their jurisdictions. For example, the districts within the ninth circuit, which covers the entire western United States, Alaska, Hawaii, Guam, and the Northern Mariana Islands, have adjudicated one-fifth (21.5 percent) of all cases received by the Commission during the fiscal years 1993 through 2003, more than any other circuit in the federal court system.

Nor did the district courts adjudicate the same percentages of defendants by gender, race and ethnicity, type of offense, or mode of conviction. More than 22 percent of the defendants sentenced in the districts of Guam, Kentucky West, Alaska, Hawaii, and Louisiana West were female. However, less than ten percent of the defendants sentenced in the districts of Oregon, Arizona, and Rhode Island were female. Less than five percent of the defendants sentenced in the following districts were black: Arizona, Idaho, California South, Puerto Rico, North Dakota, New Mexico, Utah, Wyoming, and Montana. On the other hand, more than 60 percent of the defendants sentenced in these judicial district courts were black: Virginia East, Maryland, and the District of Columbia. Less than five percent of the defendants sentenced in these districts were Hispanic: West Virginia North, Mississippi North, West Virginia South, Alabama North, and South

Carolina. However, more than 75 percent of the defendants sentenced in these district courts were Hispanic: California South, Texas West, New Mexico, Texas South, Arizona, and Puerto Rico.

The districts of New Mexico (3.5 percent) and Arizona (5.3 percent) sentenced the smallest proportion of defendants for crimes within the category of fraud, deceit, and counterfeiting offenses. Yet, this same category comprised more than 30 percent of the crimes for which defendants were sentenced in these districts: New Jersey, Oklahoma North, Delaware, Ohio North, Louisiana Middle, and Illinois North. Similarly, New Mexico (1.7 percent) and California South (2.0 percent) sentenced the smallest proportions of defendants for crimes within the category of larceny, embezzlement, theft, and money laundering. Yet, these offenses comprised more than 20 percent of the crimes for which defendants were sentenced in these districts: Louisiana West, Georgia Middle, and Kentucky West.

Very few districts sentenced significant proportions of defendants for immigration crimes. In fact, less than one percent of the defendants in these district courts were sentenced for immigration offenses: Alabama South, West Virginia South, Alabama Middle, West Virginia North, Indiana North, and Florida North. However, between 35 and 45 percent of the defendants in these districts were sentenced for immigration offenses: Texas, South, New Mexico, California South, and Arizona.

The proportion of defendants sentenced for drug offenses ranged from less than 20 percent in the California Central district to more than 60 percent in the districts of Iowa North, Puerto Rico, Iowa South, West Virginia North, and Illinois South. Fewer than five percent of the defendants in these districts were sentenced for robbery or

firearms offenses: California South, Texas West, Texas South, Arizona, and New York North. At the same time, these offenses comprised more than 20 percent of the crimes for which defendants were sentenced in these districts: Maine, Louisiana Middle, North Carolina Middle, and Maryland.

The amount of variation was small among defendants who pleaded guilty versus those defendants who were found guilty by a trial proceeding between the district courts. The district of Florida North had the lowest proportion of defendants who pleaded guilty, but it was still 85.3 percent. Meanwhile, more than 97 percent of the defendants sentenced in these districts had pleaded guilty: Louisiana East, New Mexico, California South, and Arizona.

Overall, these proportions show that the defendants who were sentenced in the federal district courts between fiscal years 1993 and 2003 were not evenly distributed by gender, race and ethnicity, type of offense, or mode of conviction across the 94 district courts. The proportion of offenses sentenced in federal judicial courts certainly is not an accurate reflection of the gender or racial and ethnic distribution of the population, or of the regional crime rate, but it does show very well the priorities of both law enforcement and U.S. attorneys in deciding which cases to bring into the purview of the jurisdiction of the federal courts. Certainly, the draconian penalties associated with federal drug offense convictions, coupled with the preferences of prosecutors to successfully prosecute the cases they bring to the courts also plays a role in deciding the final mix of cases.

The proportions of defendants in Zones A and B of the sentencing table who received prison sentences varied substantially from district to district. The incarceration rate ranged from just 12 percent in the district of Kentucky West to 80.3 percent in the

district of California South. Districts located along the southwest border of the United States all had high rates of incarceration (Arizona, 67.1 percent; New Mexico, 73.0 percent; Texas South, 70.6 percent). Districts located within the same state did not necessarily share similar incarceration rates (Wisconsin East, 13.0 percent; Wisconsin West, 62.6 percent), suggesting that other factors might be influencing these rates. Overall, no clear cut patterns emerged to explain the variance in the different proportions of the incarceration rate by judicial district court.

The Length of Term Sentence Outcome

Sentence length is the second outcome of interest in the current study. The variable that captures this outcome (TOTPRISN) is coded to capture the number of months of incarceration that the offender received at sentencing. Of those defendants sentenced to prison, the length of their term of incarceration ranged from one to 470 months. The mean average number of months of imprisonment ordered at sentencing was 59.4 months. The median number of months was 34 months and the mode was 24 months. During the eleven fiscal years of this study, the overall mean sentence length has steadily declined from 66.8 months in fiscal year 1993 to 58.4 months in fiscal year 2003 (see Table 6.6).

Male offenders received much longer sentences, on average, than their female counterparts received (see Table 6.7). Male offenders who received prison sentences received an average mean sentence length of 62.2 months. Likewise, the median length of the prison sentence was 37 months and the mode was 24 months for male offenders. In contrast, female offenders who received prison sentences received an average mean

sentence length of 35.4 months, and their median and mode sentence lengths were 21 and 12 months, respectively.

There were also stark contrasts in the different sentence lengths among defendants classified by their racial and ethnic categories. White defendants' mean sentence length was 51.5 months (median, 30; mode, 12), and Hispanic defendants' mean sentence length was slightly less at 46.3 months (median, 29; mode, 24). However, the mean sentence length for black defendants was much higher at 88.23 months (median, 60; mode, 60).

Defendants who pleaded guilty received an average mean sentence length of 52.1 months (median, 30; mode, 24). In contrast, defendants who were found guilty by a trial received about three times as long mean sentence length at 151.8 months (median 109, mode 470). Apparently, a large proportion of defendants who received life sentences chose to go to trial rather than plead guilty.

Defendants sentenced for robbery and firearms offenses had the longest mean sentence length of 83.1 months. They were followed by defendants sentenced for drug offenses (79.2 months), other offenses (50 months), larceny, theft, embezzlement, and money laundering offenses (41.6 months), immigration offenses (26 months), and fraud, deceit, and counterfeiting offenses (18.5 months). These categories are closely aligned with the offense level seriousness scores assigned to these types of crimes.

The mean sentence length appears to decline slightly over time during the eleven years used in the current study. In fiscal year 1993, the mean sentence length was at a high of 66.78 months. It declined by almost twelve months to reach a low average of 55.26 months in fiscal year 2001. During the final two fiscal years of the data set, the mean sentence length rose slightly to end at 58.4 months in fiscal year 2003.

Finally, the mean average sentence length varied by judicial district and circuit. Among the judicial circuits, mean sentence length varied from a low of 40.1 months in the ninth circuit to a high of 87.2 months in the fourth circuit. The district court with the highest mean sentence length was Florida North at 117 months. The districts of North Carolina East and North Carolina Middle also had high mean sentence lengths at 111.7 and 100.9, respectively. The districts of California South (25.3 months) and Arizona (31.7 months) had the lowest mean sentence lengths.

The Judicial Downward Departure Decision

The likelihood of receiving a judicial downward departure is the third outcome on interest to be analyzed in this analysis. Distributions of this variable show that, more often than not, convicted federal offenders sentenced under the Sentencing Guidelines do not receive departures outside of the prescribed Guideline ranges. In the current study's data set, between the fiscal years 1993 and 2003, 63.5 percent of offenders were sentenced within the Guideline's ranges. A small number of offenders (0.8 percent) received upward departures. The U.S. attorneys who prosecuted the cases filed motions with the district courts to grant substantial assistance (§5K1.1) downward departures in 17.0 percent of the cases. The sentencing court itself decided to depart downward below the Guideline penalty range for 12.5 percent of offenders sentenced during this time period. Because the current study is focusing on federal judicial discretion, substantial assistance departures will be kept separate from judicial downward departures for all subsequent analyses.

The proportion of defendants who received judicial downward departures increased each year during the study period (see Table 6.8). Defendants in fiscal year 1993 only comprised 3.7 percent of judicial downward departures. This proportion increased to 11.6 percent in fiscal year 1999 and remained in double digits for the remaining five fiscal years. Defendants who received judicial downward departures comprised 12.6 percent in the final fiscal year of the data set.

Among defendants who received judicial downward departures, males comprised 85.8 percent while females comprised only 14.2 percent (see Table 6.9). Only 13.8 percent of defendants who received judicial downward departures were black. Twice as many white defendants (27.1 percent) received judicial downward departures. Nearly four times as many Hispanic defendants (55.9 percent) received judicial downward departures.

One particularly pronounced difference was found when the defendant's departure status was distributed by citizenship status. While similar proportions of U.S. and non-U.S. citizens did not receive departures, the proportions receiving the two types of downward departures (judicial and substantial assistance) were practically opposite. In the case of U.S. citizens, about ten percent received judicial downward departures while nearly 22 percent received substantial assistance departures upon motion of the U.S. attorney assigned to prosecute the case. On the other hand, about ten percent of non-U.S. citizens received substantial assistance departures while nearly 22 percent received judicial downward departures. Thus, the fact that defendants who are Hispanic and non-U.S. citizens are receiving judicial downward departures at a much higher rate than

whites, blacks, and U.S. citizens, but the opposite is true for substantial assistance departures merits greater attention.

The vast majority of defendants who received judicial downward departures pleaded guilty (96 percent) rather than being found guilty at trial. This rate was not unexpected since departures are commonly included as part of the plea arrangement between the defendant and the prosecution. Defendants sentenced for drug offenses received more judicial downward departures (39.1 percent) than for any other crime type category. They were followed by defendants who were sentenced for immigration offenses (29.8 percent), defendants sentenced for fraud, deceit, and counterfeiting offenses (11.6 percent), defendants sentenced for robbery and firearms offenses (8.1 percent), defendants sentenced for other offense (6.5 percent), and defendants sentenced for larceny, embezzlement, theft, and money laundering offenses (4.9 percent).

The distribution of judicial downward departures by judicial circuit also showed a large amount of variation. Judicial downward departures ranged from a low of 4.2 percent of defendants in the fourth circuit to a high of 29.2 percent of defendants in the ninth circuit. The second, fifth, and tenth circuits each had judicial downward departures rates ranging between ten and twenty percent of defendants. The D.C., first, third, sixth, seventh, eighth, and eleventh circuits all had judicial downward departure rates ranging from five to ten percent of defendants. Overall, the second, fifth, and ninth circuits accounted for nearly three quarters (70.5 percent) of all the judicial downward departures granted to offenders in the data set.

The judicial districts of Arizona (19.3 percent) and California South (15.1 percent) had the highest percentages of judicial downward departures. No other districts

comprised more than eight percent of judicial downward departures. There were four districts that comprised between four and eight percent. These were the districts of Texas West (7.3 percent), Texas South (5.9 percent), New York East (5.3 percent), and New Mexico (4.5 percent). All the other judicial districts comprised less than two percent of the judicial downward departures in the study.

Descriptions of Additional Variables of Interest

Certainly, the type of crime for which the offender was sentenced plays an initial role in determining the final outcome of his or her adjudication. However, the variable that defines the final offense level (XFOLSOR) takes the type of crime, plus accounts for all the surrounding circumstances that might mitigate or aggravate the gravity of factors used by the judge to determine the seriousness of the offense. In other words, the seriousness of the offense, rather than the type of the offense, should dictate the sentencing outcome. An offender who is assigned a final offense level of 6 will receive a less severe sentencing outcome than an offender who is assigned a final offense level of 26. It is presumed that the Commission already took the seriousness of the offense into account when assigning each offense type an offense seriousness score within the Guidelines. However, by including a variable representing offense type categories, this study will be able to determine whether the type of crime for which these offenders are sentenced exercises an independent influence on the sentencing outcome.

As mentioned previously, the penalty table created by the Sentencing Commission contains 43 offense levels. The seriousness of the offense increases with each offense level, as likewise do the corresponding penalty ranges. In other words, the

greater the convicted offender's criminal history category and offense seriousness level, the lower the probability that he will be assigned no prison term (Mustard, 2001). The smallest penalty range for the first few offense levels is zero to six months. This comprises Zone A of the sentencing table. Each successive level and zone has larger and longer penalty ranges. The highest offense levels encompass the longest penalty ranges—thirty years to life. A death sentence is not included in the penalty table, but it is a possible sentencing option for a number of federal crimes, as defined by statute rather than incorporated into the Guidelines.

While the sentencing table stops at 43 levels, the actual score computed for the offense conduct can go higher. For these reasons, the final offense level variable in the data set ranges from one to 53. Scores higher than 43 were truncated at 43 since they are treated the same by the sentencing table. The mean value for this variable is 18.4 (mode is 21 and median is 18). Offense level 18 is located in Zone D of the sentencing table, and depending on the criminal history category, directs the judge to sentence the convicted offender to a term of incarceration ranging between 27 and 71 months. Probation and intermediate sanctions, including alternative community confinement or split sentences, are not available sentencing options in Zone D of the sentencing table.

When final offense level is distributed by gender, male offenders' final offense level score ranges from one to 53, and the average mean score is 19.1. Female offenders' final offense level score ranges from one to 50, and the average mean score is 14.6. When distributed by racial and ethnic categories, white offenders have the lowest average mean offense level score (16.8), followed by Hispanic offenders (18.5), and black offenders have the highest average mean offense level score (20.9).

There are six criminal history categories in the sentencing table created by the Sentencing Commission. Thus, the variable that captures the offender's final criminal history category (XCRHISSR) ranges from one to six. The mean criminal history category of the data set was 2.3 and the mode was 1. Just over one-half of the offenders in the data set (50.9 percent) were placed in the first, or lowest, criminal history category of the sentencing table. Another 10.4 percent of offenders were placed in the second criminal history category, and 12.9 percent of offenders were placed in the third criminal history category. This distribution suggests that the majority of offenders convicted and sentenced in the federal criminal justice system between fiscal years 1993 and 2003 do not have extensive criminal histories.

The number of counts of conviction among defendants in the dataset ranged from one to 495 separate counts. The mean number of counts of conviction was 1.6 and the median number of counts of conviction was 1.0, suggesting that the vast majority (79.7 percent) of convicted federal offenders were sentenced for just one criminal count. In order to keep the model as parsimonious as possible, this variable was recoded into a dichotomous variable representing defendants with 1 count of conviction versus defendants with multiple counts of conviction. Hence, subsequent analyses will use the recoded dichotomous variable to represent the number of counts of conviction.

Nearly 85 percent of female defendants were sentenced for only one count of conviction. The same was true for 79 percent of the male defendants. Approximately 75 percent of both white and black defendants were sentenced for only one count of conviction. Hispanics, on the other hand, were sentenced for only one count of conviction in 87.5 percent of the cases in the data set.

A guilty plea is by far the most frequent type of disposition in the federal judicial system. Regardless of the method of case resolution (guilty plea or trial) however, a judge must use the same process to determine the appropriate sentence for each defendant (Payne, 1997). In other words, defendants who exercise their right to a trial should not receive additional penalties, commonly called a "trial tax," at sentencing (Smith and Damphousse, 1998; Johnson, 2005). During fiscal years 1993 through 2003, 94.0 percent of federal criminal case outcomes were decided by a guilty plea. The remaining 6.0 percent of cases were resolved by a trial conviction.

When distributed by gender, the percent of female defendants (95.8 percent) who pleaded guilty was only slightly higher than for male defendants (93.6 percent). The proportions for mode of conviction did not vary substantially by race and ethnicity either. Black defendants had the smallest proportion of guilty pleas (91.0 percent), followed by white defendants (93.8 percent), and Hispanic defendants had the highest proportion of guilty pleas (96.3 percent).

The age of the defendants ranged from a low of 16 years of age to a high of 102 years of age at the time of sentencing. The mean age of the offenders in the data set is 34.4 years (median is 32 and mode is 26 years of age at the time of sentencing). These averages did not vary between genders, but they did vary by race and ethnicity. The mean age of white defendants is 38.5 years while it is 31.8 for black defendants and 32.3 for Hispanic defendants. Thus, the majority of offenders in the younger ages are black and Hispanic. Older offenders are more often identified as non-minority.

U.S. citizens comprise 66.8 percent of offenders while non-citizens comprise 29.7 percent of the offenders in the data set. A much higher proportion of female defendants

(83.3 percent) are U.S. citizens than male defendants (66.9 percent). The vast majority of white offenders (95.0 percent) and black offenders (91.3 percent) are U.S. citizens, but the opposite is true for Hispanic offenders. The majority of Hispanic offenders (71.9 percent) are *non*-citizens, and, overall, Hispanic offenders comprise 83.0 percent of the total number of offenders in the non-citizen status category.

The level of education of the offenders sentenced during fiscal years 1993 through 2003 is captured in the variable that categorizes their highest achieved level of education. Interestingly, and perhaps owing to age differences, more than 25.6 percent of female offenders had taken some college courses while less than 17.4 percent of male offenders had enrolled or attended college. Overall, 63.2 percent of white offenders, 74.3 percent of black offenders, and 87.4 percent of Hispanic offenders were located in the first two categories of less than a high school education or achievement of a high school diploma or G.E.D. certificate. This lack of educational attainment was especially pronounced among the Hispanic offenders, 67.9 percent of whom had not completed their high school educations.

The number of dependent minor children for whom the convicted offender was responsible as a parent or guardian was originally captured in a continuous variable ranging from 1 to 96. In the interest of creating the most parsimonious model for this analysis, it was recoded into a dummy variable indicating either no dependents or dependents. Approximately the same percentage of male and female offenders reported to have dependents while black and Hispanic offenders claimed dependents more often and in greater numbers than white offenders.

In summary, the descriptive analyses of the federal sentencing data used for this study appear to support the proposition underlying the hypotheses, namely that offense levels and criminal history categories are, by themselves, insufficient to explain the differences in sentencing outcomes for defendants of different genders and racial and ethnic combinations. There appears to be some residual evidence of the impact of judicial discretion on the outcome of the convicted offender's sentence. This disparity appears to stand out as a result of defendant's ascribed characteristics. Further analyses of the data should clarify the depth and extent of this hypothesized relationship.

Bivariate Correlation Analysis

After examining the characteristics and distributions of the variables of interest to the current study, the next step in the analysis involved determining the extent of the relationship, or covariance, between the independent variables themselves and between the independent variables and the dependent variables when all the other independent variables are held constant. Bivariate correlation analysis was performed to check for multicollinearity between the independent variables as well as to verify the existence of a correlation between each of the selected independent variables and the dependent variables.

Because the direction of the covariation between the variables is predicted in the proposed research hypotheses, one-tailed correlation tests were conducted on the variables. Additionally, categorical variables containing more than two categories such as the race and ethnicity variable, the education level variable, and the offense type variable were separated out into dummy variables to facilitate a meaningful

interpretation. The bivariate correlation analysis resulted in a varying amount of correlation between the independent variables, some greater than others. This was not an unexpected result, owing to the overlapping influence of these variables on the sentencing outcome.

There was a large degree of correlation between the presumptive sentence and the final offense level (0.851), but only half as large a correlation between the presumptive sentence and the final criminal history category (0.348). The presumptive sentence variable also had notable correlations with drug offenses (0.379), plea agreement of trial conviction (0.271), and if the defendant was black (0.210). The dummy variable indicating a defendant is black produced notable correlations with the final offense level, the final criminal history category, and the presumptive sentence variables, whereas the dummy variables for white and Hispanic defendants were all negative. Black defendants also produced significant correlations with robbery and firearms offenses. On the other hand, female and white defendants were more highly correlated with the fraud, deceit, and counterfeiting offenses category.

Correlations between the independent and dependent variables also revealed some important relationships. The largest correlations for the in/out decision and the judicial downward departure decision were the citizenship variables, the dummy variable indicating Hispanic ethnicity, and the dummy variable indicating immigration offenses. The largest correlations for the length-of-term decision was with the presumptive sentence, the final offense level, plea agreement or trial conviction, final criminal history score, the dummy variable indicating drug offenses, and the dummy variable indicating a black defendant. The year of sentencing was moderately correlated with the in/out

decision, as was the dummy variable indicating larceny, embezzlement, theft, and money laundering offenses, but this was a negative correlation. Fraud, deceit, and counterfeiting offenses were negatively correlated with the length-of-term decision.

The bivariate correlation analysis suggests that the final offense level score and the criminal history score play an important role in effecting the length-of-term sentencing outcome. In addition, the presumptive sentence variable, the type of conviction (plea or trial), and the crime type category represent important statistical controls for estimating the effects of gender, race, and ethnicity on the decision to incarcerate, the length-of-term of incarceration, and the decision to depart downward below the prescribed Guideline penalty range.

As part of this analysis, diagnostic tests were performed to detect multicollinearity by regressing each independent variable on the other independent variables (see Table 6.10). In so doing, each independent variable acts as a dependent variable while the other independent variables operate as independent variables for the duration of the analysis. These tests revealed a very strong correlation between district court and circuit court locations. The circuit court location variable was dropped from subsequent analyses in order to allow for the unique effects of sentencing location to be explained at the district court level.

These tests also revealed a pretty strong correlation between the final offense level and the presumptive sentence. In the preliminary analysis, both the final offense level and presumptive sentence variables were retained. While some variance may be attributed to the shared influence of these two variables, the associated amount can be detected by removing one variable from the model each time it is run, thus allowing for

the influence of each variable to be distinguished separately. In the final regression models, however, the final offense level variable was excluded in order to accurately predict the influence of the presumptive sentence variable and avoid misspecification of the regression model.

The bivariate correlation analysis indicates the direction and strength of the relationship between variables when they are correlated with one another simultaneously. However, multiple regression analysis is necessary in order to measure the degree of association when the other independent variables are held constant. It will also allow for more complex analyses of the interaction effects of gender and race and ethnicity on the outcome variables. The results of this more sophisticated multiple regression analysis are detailed in the following chapter.

TABLES

Table 6.1. Descriptive Statistics of Continuous and Categorical Variables from the U.S. Sentencing Commission Data, FY1993-2003 (N = 572,540).

Continuous Variables	N	Mean	S.D.	Min.	Max.	Missing
Length of Incarceration	452,438	59.35	73.200	1	470	120,102
Age at Sentencing	561,993	34.38	10.813	16	102	10,547
Age^2	561,993	1,298.79	857.455	16^2	102^2	10,547
Final Criminal History	540,960	2.26	1.672	1	6	31,580
Presumptive Sentence	537,132	55.09	71.082	0	470	35,408

Categorical Variables & Codes	N	Percent	Cumulative Percent
Incarceration Outcome for Zones A & B			
Non-Prison (0)	62,531	10.9	10.9
Prison (1)	40,139	7.0	17.9
Missing/Not Applicable	469,870	82.1	100.0
Departure Status Outcome			
No Departure (0)	363,549	63.5	63.5
Upward Departure (1)	4,384	0.8	64.3
Judicial Downward (2)	71,459	12.5	76.8
Sub. Assist. (5K) (3)	97,063	17.0	93.8
Missing	36,085	6.3	100.0
Defendant's Gender			
Male (0,1)	487,446	85.1	85.1
Female (0,1)	83,728	14.6	99.8
Missing (0,1)	1,366	0.2	100.0
Race & Ethnicity			
White (0,1)	189,538	33.1	33.1
Black (0,1)	148,304	25.9	59.0
Hispanic (0,1)	201,905	35.3	94.3
Other (0,1)	22,119	3.9	98.2
Missing (0,1)	10,674	1.9	100.0
Citizenship			
U.S. Citizen (0,1)	382,734	66.8	66.8
Non-U.S. Citizen (0,1)	170,097	29.7	96.5
Missing (0,1)	19,709	3.4	100.0
Primary Offense Type			
Fraud & Counterfeiting (0,1)	101,555	17.7	17.7
Larceny & Theft (0,1)	48,430	8.5	26.2
Immigration (0,1)	84,762	14.8	41.0
Drugs (0,1)	234,366	40.9	81.9
Robbery & Firearms (0,1)	57,130	10.0	91.9
Other Offenses (0,1)	43,862	7.7	99.6
Missing (0,1)	2,435	0.4	100.0
Type of Disposition			
Guilty Plea (0,1)	535,183	93.5	93.5

TABLES (continued)

Categorical Variables	N	Percent	Cumulative Percent
Trial Conviction (0,1)	34,384	6.0	99.5
Missing (0,1)	2,973	0.5	100.0
Counts of Conviction			
1 Count (0,1)	456,276	79.7	79.7
2+ Counts (0,1)	114,646	20.0	99.7
Missing (0,1)	1,618	0.3	100.0
Educational Category			
Less than H.S. (0,1)	230,134	40.2	40.2
H.S. or G.E.D. (0,1)	163,757	28.6	68.8
Some College (0,1)	98,659	17.2	86.0
College Grad. (0,1)	36,692	6.4	92.4
Missing (0,1)	43,298	7.6	100.0
Dependents			
No Dependents (0,1)	203,121	35.5	35.5
Dependents (0,1)	325,754	56.9	92.4
Missing (0,1)	43,665	7.6	100.0
Sentencing Year			
FY 1993 (0,1)	42,107	7.4	7.4
FY 1994 (0,1)	39,971	7.0	14.4
FY 1995 (0,1)	38,500	6.7	21.1
FY 1996 (0,1)	42,436	7.4	28.5
FY 1997 (0,1)	48,848	8.5	37.0
FY 1998 (0,1)	50,754	8.9	45.9
FY 1999 (0,1)	55,557	9.7	55.6
FY 2000 (0,1)	59,846	10.5	66.1
FY 2001 (0,1)	59,897	10.5	76.6
FY 2002 (0,1)	64,366	11.2	87.8
FY 2003 (0,1)	70,258	12.3	100.0
U.S. Circuit Courts			
First Circuit (0,1)	15,868	2.8	2.8
Second Circuit (0,1)	46,914	8.2	11.0
Third Circuit (0,1)	27,243	4.8	15.8
Fourth Circuit (0,1)	54,853	9.6	25.4
Fifth Circuit (0,1)	98,925	17.3	42.7
Sixth Circuit (0,1)	44,996	7.9	50.6
Seventh Circuit (0,1)	24,934	4.4	55.0
Eighth Circuit (0,1)	34,042	5.9	60.9
Ninth Circuit (0,1)	122,887	21.5	82.4
Tenth Circuit (0,1)	33,128	5.8	88.2
Eleventh Circuit (0,1)	63,989	11.2	99.4
D.C. Circuit (0,1)	4,761	0.8	100.0
Block of 94 District Courts (0,1)	572,540	100.0	100.0

Table 6.2. Year of Sentencing by Defendant's Gender

Variable	Males		Females		TOTAL	
Description	N	Percent	N	Percent	N	Percent
1993	35,614	(84.6%)	6,460	(15.4%)	42,074	(100.0%)
1994	33,818	(84.6%)	6,148	(15.4%)	39,966	(100.0%)
1995	32,745	(85.1%)	5,742	(14.9%)	38,487	(100.0%)
1996	35,893	(84.6%)	6,540	(15.4%)	42,433	(100.0%)
1997	41,478	(85.0%)	7,304	(15.0%)	48,782	(100.0%)
1998	43,054	(84.9%)	7,646	(15.1%)	50,700	(100.0%)
1999	46,946	(84.6%)	8,563	(15.4%)	55,509	(100.0%)
2000	51,067	(85.7%)	8,555	(14.3%)	59,622	(100.0%)
2001	51,197	(85.5%)	8,658	(14.5%)	59,855	(100.0%)
2002	55,077	(86.0%)	8,962	(14.0%)	64,039	(100.0%)
2003	60,557	(86.9%)	9,150	(13.1%)	69,707	(100.0%)
TOTAL*	487,446	(85.3%)	83,728	(14.7%)	571,174	(100.0%)

* There were 1,366 cases in the dataset where the Gender variable was missing.

Table 6.3. Year of Sentencing by Defendant's Race and Ethnicity

Variable	White		Black		Hispanic	
Description	N	Percent	N	Percent	N	Percent
1993	18,174	(43.6%)	12,175	(29.2%)	9,936	(23.8%)
1994	16,470	(41.5%)	12,032	(30.3%)	9,764	(24.6%)
1995	14,998	(39.2%)	11,139	(29.1%)	10,450	(27.3%)
1996	15,152	(35.9%)	11,971	(28.4%)	13,095	(31.0%)
1997	16,565	(34.7%)	12,891	(27.0%)	16,169	(33.8%)
1998	16,059	(32.1%)	13,251	(26.5%)	18,465	(36.9%)
1999	16,734	(30.7%)	14,249	(26.2%)	21,260	(39.1%)
2000	17,780	(30.1%)	14,762	(25.0%)	24,263	(41.0%)
2001	17,790	(30.4%)	14,767	(25.2%)	23,773	(40.6%)
2002	19,216	(30.7%)	15,353	(24.6%)	25,669	(41.1%)
2003	20,600	(30.4%)	15,714	(23.2%)	29,061	(42.9%)
TOTAL*	189,538	(33.7%)	148,304	(26.4%)	201,905	(35.9%)

There were 22,119 cases in the "Other" race category and 10,674 cases were missing information on the defendant's race and/or ethnicity category. The "Other" race category includes Asians, American Indians, Pacific Islanders, and Alaska Natives.

Table 6.4. Defendant's Receipt of Prison Sentence (In/Out Status) by Fiscal Year

Variable Description	Non-Prison Sentence N	Non-Prison Sentence Percent	Prison Sentence N	Prison Sentence Percent
FY 1993	6,768	(71.8%)	2,653	(28.2%)
FY 1994	5,915	(71.7%)	2,332	(28.3%)
FY 1995	5,405	(69.6%)	2,358	(30.4%)
FY 1996	5,392	(66.4%)	2,727	(33.6%)
FY 1997	5,805	(61.9%)	3,574	(38.1%)
FY 1998	5,171	(60.6%)	3,367	(39.4%)
FY 1999	5,565	(61.5%)	3,490	(38.5%)
FY 2000	5,596	(54.4%)	4,685	(45.6%)
FY 2001	5,263	(56.9%)	3,985	(43.1%)
FY 2002	5,389	(53.9%)	4,601	(46.1%)
FY 2003	6,262	(49.6%)	6,367	(50.4%)

* There were 469,870 defendants who were either not sentenced within range, or located in Zones C or D, or missing this information.

Table 6.5. Descriptive Statistics for In/Out Incarceration Decision

Variable Description	Non-Prison Sentence N	Non-Prison Sentence Percent	Prison Sentence N	Prison Sentence Percent
Defendant's Gender				
Male	41,316	55.3	33.348	44.7
Female	20,542	75.6	6,619	24.4
TOTAL	61,858	60.7	39,967	39.3
Race & Ethnicity				
White	30,012	75.2	9,879	24.8
Black	15,886	68.7	7,228	31.3
Hispanic	9,596	32.6	19,824	67.4
Other	4,010	68.6	1,834	31.4
TOTAL	59,504	60.6	38,765	39.4
Primary Offense Type				
Fraud & Counterfeiting	25,423	67.6	12,183	32.4
Larceny & Theft	15,373	79.6	3,938	20.4
Immigration	4,338	21.3	16,068	78.7
Drugs	6,318	62.0	3,868	38.0
Robbery & Firearms	1,321	63.7	752	36.3
Other Offenses	8,861	73.7	3,165	26.3
TOTAL	61,634	60.7	39,974	39.3
Type of Disposition				
Guilty Plea	60,567	60.7	39,199	39.3
Trial Conviction	1,134	57.8	828	42.2
TOTAL	61,701	60.7	40,027	39.3

Table 6.6. Description of Defendant's Sentence Length by Fiscal Year

Variable Description	N	Mean	S.D.	Med.	Mode	Missing
FY 1993	31,668	66.78	81.231	37	60	10,439
FY 1994	30,325	66.48	82.554	37	60	9,646
FY 1995	29,498	63.58	79.571	36	24	9,002
FY 1996	33,258	62.82	79.072	36	24	9,178
FY 1997	37,509	59.84	77.489	33	24	11,339
FY 1998	40,600	58.29	73.559	32	24	10,154
FY 1999	44,743	57.42	71.850	33	24	10,814
FY 2000	48,600	55.49	67.811	33	12	11,246
FY 2001	49,103	55.26	66.043	33	12	10,794
FY 2002	51,584	56.65	66.849	34	24	12,782
FY 2003	55,550	58.41	68.874	36	24	14,708

* There were 120,102 defendants who were missing information on the sentence length variable.

Table 6.7. Descriptive Statistics for Defendant's Sentence Length

Variable Description	N	Mean	S.D.	Med.	Mode	Missing
Defendant's Gender						
Female	47,729	35.41	46.114	21	12	35,999
Male	404,385	62.20	75.264	37	24	83,061
Missing	324	32.92	61.437	12	24	1,042
Race & Ethnicity						
White	133,560	51.51	64.500	30	12	55,978
Black	121,814	88.23	93.264	60	60	26,490
Hispanic	178,333	46.30	56.804	29	24	23,572
Other	15,444	51.06	68.091	27	12	6,675
Missing	3,287	54.80	79.489	24	6	7,387
Primary Offense Type						
Fraud & Counter.	57,160	18.54	21.296	12	12	44,395
Larceny & Theft	26,372	41.63	66.872	21	12	22,058
Immigration	73,994	26.01	22.344	24	24	10,768
Drugs	214,412	79.23	80.605	57	60	19,954
Robbery & Firearms	52,977	83.09	82.815	57	60	4,153
Other Offenses	26,874	50.00	82.049	24	12	16,988
Missing	649	58.92	73.390	35	24	1,786
Type of Disposition						
Guilty Plea	419,031	52.11	59.763	30	24	116,152
Trial Conviction	32,330	151.80	137,771	109	470	2,054
Missing	1,077	103.67	112.193	60	12	1,896

Table 6.8. Defendant's Receipt of Departures by Fiscal Year

Variable	No Departure		Jud. Downward		Sub. Assist.		Up Departure	
Description	N	Percent	N	Percent	N	Percent	N	Percent
FY 1993	30,470	75.3	2,676	6.6	6,840	16.9	456	1.1
FY 1994	27,591	71.7	2,932	7.6	7,524	19.5	451	1.2
FY 1995	26,259	71.0	3,110	8.4	7,271	19.7	335	0.9
FY 1996	28,445	69.6	4,201	10.3	7,845	19.2	388	0.9
FY 1997	31,233	67.9	5,574	12.1	8,823	19.2	387	0.8
FY 1998	31,772	66.3	6,509	13.6	9,224	19.3	391	0.8
FY 1999	34,020	64.9	8,304	15.8	9,788	18.7	313	0.6
FY 2000	35,219	64.5	9,286	17.0	9,754	17.9	358	0.7
FY 2001	35,128	64.0	10,026	18.3	9,390	17.1	307	0.6
FY 2002	38,159	65.0	9,865	16.8	10,203	17.4	457	0.8
FY 2003	45,253	69.4	8,976	13.8	10,401	16.0	541	0.8

* There were 36,085 defendants who were missing information regarding their Departure status.

Table 6.9. Descriptive Statistics for Judicial Downward Departure Decision

Variable	Judicial Downward Departure		
Description	N	Percent	Cum. Percent
Defendant's Gender			
Male	61,283	85.8	85.8
Female	10,131	14.2	100.0
TOTAL	71,414	100.0	
Race & Ethnicity			
White	19,222	27.1	27.1
Black	9,813	13.8	40.9
Hispanic	39,697	55.9	96.8
Other	2,319	3.2	100.0
TOTAL	71,051	100.0	
Primary Offense Type			
Fraud & Counterfeiting	8,287	11.6	11.6
Larceny & Theft	3,505	4.9	16.5
Immigration	21,266	29.8	46.3
Drugs	27,857	39.1	85.4
Robbery & Firearms	5,777	8.1	93.5
Other Offenses	4,624	6.5	100.0
TOTAL	71,316	100.0	
Type of Disposition			
Guilty Plea	68,428	96.0	96.0
Trial Conviction	2,838	4.0	100.0
TOTAL	71,266	100.0	

Table 6.10. Correlation Matrix for Independent Variables, FY1993-2003 (N = 572,540)

Variable	Gender	White	Black	Hispanic	Citizenship	Age	Educ Level 1	Educ Level 2	Educ Level 3	Educ Level 4	Dependents	Plea or Trial
Gender	1.00	-	-	-	-	-	-	-	-	-	-	-
White	0.054**	1.00	-	-	-	-	-	-	-	-	-	-
Black	0.041**	-0.427**	1.00	-	-	-	-	-	-	-	-	-
Hispanic Ethnicity	-0.101**	-0.534**	-0.448**	1.00	-	-	-	-	-	-	-	-
Citizenship	-0.126**	-0.400**	-0.287**	0.661**	1.00	-	-	-	-	-	-	-
Age	0.012**	0.276**	-0.146**	-0.139**	-0.102**	1.00	-	-	-	-	-	-
Educ Level 1	-0.087**	-0.272**	-0.059**	0.345**	0.313**	-0.163**	1.00	-	-	-	-	-
Educ Level 2	0.037**	0.113**	0.062**	-0.174**	-0.189**	-0.006**	-0.587**	1.00	-	-	-	-
Educ Level 3	0.075**	0.109**	0.042**	-0.156**	-0.136**	0.066**	-0.420**	-0.320**	1.00	-	-	-
Educ Level 4	-0.014**	0.159**	-0.062**	-0.118**	-0.059**	0.228**	-0.239**	-0.183**	-0.131**	1.00	-	-
Dependents	0.011**	-0.117**	0.040**	0.087**	0.067**	0.060**	0.047**	-0.023**	-0.038**	0.008**	1.00	-
Plea or Trial	-0.032**	0.003**	0.074**	-0.073**	-0.060**	0.062**	-0.029**	0.009**	0.009**	0.027**	0.007**	1.00
Counts of Conviction	-0.046**	0.071**	0.075**	-0.143**	-0.133**	0.069**	-0.067**	0.018**	0.028**	0.056**	-0.004**	0.283**
Offense Level	-0.173**	-0.131**	0.158**	0.002	-0.043**	-0.047**	0.077**	0.023**	-0.065**	-0.094**	0.047**	0.224**
Criminal History	-0.186**	-0.111**	0.157**	-0.005**	-0.015**	-0.072**	0.122**	0.041**	-0.108**	-0.148**	-0.037**	0.019**
Presumptive Sentence	-0.151**	-0.128**	0.210**	-0.051**	-0.082**	-0.046**	0.058**	0.040**	-0.059**	-0.097**	0.041**	0.271**
Other Offenses	-0.009**	0.116**	-0.057**	-0.122**	-0.117**	0.064**	-0.069**	0.025**	0.024**	0.051**	-0.037**	0.024**
Fraud & Counterfeiting	0.162**	0.208**	0.013**	-0.230**	-0.169**	0.193**	-0.230**	0.001	0.151**	0.214**	-0.003*	-0.023**
Larceny & Theft	0.096**	0.098**	0.013**	-0.126**	-0.113**	0.073**	-0.102**	0.034**	0.060**	0.046**	-0.004**	0.006**
Immigration Offenses	-0.105**	-0.258**	-0.217**	0.472**	0.549**	-0.088**	0.264**	-0.139**	-0.124**	-0.073**	0.013**	-0.082**
Drug Offenses	-0.042**	-0.122**	0.081**	0.080**	-0.026**	-0.124**	0.105**	0.017**	-0.067**	-0.133**	0.054**	0.038**
Robbery & Firearms	-0.094**	0.050**	0.145**	-0.176**	-0.185**	-0.064**	-0.006**	0.066**	-0.027**	-0.065**	-0.062**	0.037**
Sentencing Year	-0.017**	-0.086**	-0.047**	0.130**	0.095**	-0.024**	0.058**	-0.012**	-0.040**	-0.030**	0.001	-0.100**

** Correlation is significant at the 0.01 level (1-tailed).

* Correlation is significant at the 0.05 level (1-tailed).

Table 6.10. Correlation Matrix for Independent Variables, FY1993-2003 (N = 572,540) *continued*

Variable	Counts of Conviction	Offense Level	Criminal History	Presumptive Sentence	Crime Type 1	Crime Type 2	Crime Type 3	Crime Type 4	Crime Type 5	Crime Type 6	Sentencing Year
Gender	-	-	-	-	-	-	-	-	-	-	-
White	-	-	-	-	-	-	-	-	-	-	-
Black	-	-	-	-	-	-	-	-	-	-	-
Hispanic Ethnicity	-	-	-	-	-	-	-	-	-	-	-
Citizenship	-	-	-	-	-	-	-	-	-	-	-
Age	-	-	-	-	-	-	-	-	-	-	-
Educ Level 1	-	-	-	-	-	-	-	-	-	-	-
Educ Level 2	-	-	-	-	-	-	-	-	-	-	-
Educ Level 3	-	-	-	-	-	-	-	-	-	-	-
Educ Level 4	-	-	-	-	-	-	-	-	-	-	-
Dependents	-	-	-	-	-	-	-	-	-	-	-
Plea or Trial	-	-	-	-	-	-	-	-	-	-	-
Counts of Conviction	1.00	-	-	-	-	-	-	-	-	-	-
Offense Level	0.222**	1.00	-	-	-	-	-	-	-	-	-
Criminal History	0.011**	0.188**	1.00	-	-	-	-	-	-	-	-
Presumptive Sentence	0.213**	0.851**	0.348**	1.00	-	-	-	-	-	-	-
Other Offenses	-0.013**	-0.117**	-0.041**	-0.078**	1.00	-	-	-	-	-	-
Fraud & Counterfeiting	0.055**	-0.361**	-0.156**	-0.277**	-0.134**	1.00	-	-	-	-	-
Larceny & Theft	0.015**	-0.174**	-0.086**	-0.108**	-0.088**	-0.142**	1.00	-	-	-	-
Immigration Offenses	-0.162**	-0.184**	0.205**	-0.142**	-0.121**	-0.195**	-0.127**	1.00	-	-	-
Drug Offenses	-0.018**	0.515**	-0.087**	0.379**	-0.241**	-0.389**	-0.255**	-0.349**	1.00	-	-
Robbery & Firearms	0.091**	0.088**	0.217**	0.061**	-0.096**	-0.155**	-0.102**	-0.139**	-0.279**	1.00	-
Sentencing Year	-0.056**	0.011**	0.063**	-0.015**	-0.008**	-0.050**	-0.075**	0.135**	-0.008**	-0.006**	1.00

** Correlation is significant at the 0.01 level (1-tailed).

* Correlation is significant at the 0.05 level (1-tailed).

Table 6.11. Bivariate Correlations between Independent Variables and Dependent Variables, FY1993-2003 (N = 572,540)

Variable	In/Out Decision	Length of Prison Decision	Departure Decision
Gender	-0.181**	-0.112**	-0.005**
White	-0.254**	-0.070**	-0.058**
Black	-0.092**	0.241**	-0.114**
Hispanic Ethnicity	0.378**	-0.145**	0.168**
Citizenship	0.430**	-0.166**	0.163**
Age	-0.174**	-0.017**	0.000
Educ Level 1 (Less Than High School)	0.267**	-0.003*	0.085**
Educ Level 2 (High School or GED)	-0.100**	0.063**	-0.055**
Educ Level 3 (Some College)	-0.116**	-0.028**	-0.038**
Educ Level 4 (College Degree)	-0.096**	-0.074**	-0.008**
Dependents	-0.017**	0.027**	-0.004**
Plea or Trial	0.010**	0.352**	-0.036**
Counts of Conviction	-0.030*	0.285**	-0.070**
Offense Level	0.021**	0.735**	0.005**
Criminal History	0.285**	0.258**	0.040**
Presumptive Sentence	0.126**	0.856**	-0.037**
Other Offenses (Crime Type Category 1)	-0.101**	-0.032**	-0.009**
Fraud & Counterfeiting (Crime Type Category 2)	-0.118**	-0.212**	-0.064**
Larceny & Theft (Crime Type Category 3)	-0.183**	-0.060**	-0.051**
Immigration Offenses (Crime Type Category 4)	0.404**	-0.202**	0.172**
Drug Offenses (Crime Type Category 5)	-0.003	0.258**	-0.024**
Robbery & Firearms (Crime Type Category 6)	-0.011**	0.118**	-0.025**
Sentencing Year	0.146**	-0.044**	0.094**

** Correlation is significant at the 0.01 level (1-tailed).

* Correlation is significant at the 0.05 level (1-tailed).

CHAPTER VII. RESULTS OF MULTIVARIATE ANALYSES

The results of the analysis of each of the three sentencing decisions within the purview of federal judges are presented along two dimensions. The first dimension consists of an aggregate summary of sentencing disparity under the Guidelines throughout the entire eleven fiscal years of 1993 to 2003. Therefore, the first section will summarize the overall findings in order to demonstrate whether the effects of the independent variables are in accordance with the hypotheses of the study. The second dimension summarizes the changes over time when the data were separated by each individual fiscal year to facilitate a temporal analysis. Thus, the second section will determine the effects of the independent variables on the three sentencing outcomes over time by examining trends of convergence and/or divergence in the data. Together, these two sets of findings produce a broader and more meaningful framework for interpreting warranted and unwarranted disparity and change in sentencing outcomes under the Federal Sentencing Guidelines than has heretofore been presented.

SECTION 1. Results of the Overall Aggregate Analysis

The In/Out Decision (Overall Results)

The Effects of Gender and Race and Ethnicity

The incarceration decision is restricted to defendants whose final criminal history category and offense seriousness score place them in the upper two zones of the sentencing table and who are sentenced within the Guideline's range. The results of the logistic regression analysis on this applicable subset of offenders revealed that the

coefficient value for gender is negative and significant (-.393), indicating that gender does exercise a significant effect on the in/out incarceration decision (see Table 7.1). Thus, female defendants, as a group, are less likely to receive a sentence of incarceration (.675) than similarly situated male defendants, when that option is available.

The effects of the defendant's racial and ethnic category also produced significant coefficients in the overall model. The coefficient for black defendants was positive and significant, indicating that black defendants were 1.22 times more likely to be sentenced to prison than the reference category of white defendants. The coefficient for Hispanic defendants was also significant and had an even greater magnitude. Hispanic defendants in these upper two tiers of the sentencing table were 1.42 times more likely to be sent to prison than were white defendants. Finally, for the defendants who were placed in the "other" racial category, a significant negative coefficient was produced by the model, indicating a moderate decrease in the likelihood of imprisonment for defendants in the other racial category compared to similarly-situated white defendants.

The Effect of Type of Conviction

Overall, the type of conviction—pleading guilty versus trial conviction—produced a positive and significant coefficient, suggesting that being found guilty after a trial rather than pleading guilty earlier in the judicial process increases the odds of receiving a prison sentence. The odds ratio produced for defendants who were convicted by a trial indicated that the likelihood of receiving a sentence of incarceration was nearly two times as great (1.897) as the odds for a defendant who pleaded guilty at an earlier stage in the judicial court process.

This finding suggests that it would be more advantageous for defendants whose offenses place them in the upper two tiers of the sentencing table to plead guilty as part of a negotiated plea agreement offered by the prosecution than to go through the long process of a trial. It also suggests that there is more at stake when a defendant chooses to gamble on the outcome of a trial. A trial conviction raises the likelihood of receiving a sentence of incarceration, imposing a trial tax on the defendant who chooses to exercise his constitutional rights.

The Effect of Offense Type Category

There were four categories of crimes that exerted a significant influence on the incarceration decision independent of the influence exerted by the presumptive sentence and the final criminal history score. The categories representing fraud, deceit, and counterfeiting offenses, immigration offenses, and drug offenses each *increased* the probability of a defendant going to prison rather than receiving a non-incarceration alternative. Immigration offenses had the largest effect, increasing the odds of receiving a prison sentence by three and one-half times in comparison to the reference category of "other" offenses. On the other hand, the category representing larceny, embezzlement, theft, and money laundering offenses exerted a significant *reduction* in the likelihood of going to prison. Meanwhile, the category representing robbery and firearms offenses produced a small positive coefficient, but it was not significant. Taken as a whole, an increase in the explanatory power of the overall model with the inclusion of this variable suggests that all of the circumstances surrounding the instant offense were not entirely compensated for by the Guideline's special offense characteristics and offense level

adjustments. The offense itself still exerts a significant influence on the decision to incarcerate.

The Effect of Judicial District Court Location

Among the 94 district courts, all but three produced significant coefficients, the majority of which were negative coefficients, when the full model was regressed on all eleven fiscal years combined. Only one district produced a significant positive coefficient—the western district of Wisconsin. Among the districts that produced significant negative coefficients, indicating a decrease in the likelihood of receiving a prison sentence, defendants sentenced in the northern district of California had the lowest odds of imprisonment with an expected probability less than one-tenth as likely as defendants sentenced in the reference category of the district of Maine. The districts of Oklahoma East (.099), Wisconsin East (.118), and Kentucky West (.131) also had very low odds of receiving a sentence of incarceration. Thus, it appears that geographic location of sentencing does exert a significant effect on the in/out incarceration decision for many judicial districts, but these effects are, generally, in the same direction.

The Effect of Sentencing Year

The variable that captured the fiscal year of sentencing was also included in the full model to determine whether the year in which the defendant was sentenced exerted a significant effect on the incarceration outcome (see Table 7.1). The year of sentencing produced significant negative coefficients during the first four fiscal years between 1993 and 1996 in comparison to the midpoint fiscal year 1998, which was the reference

category. The coefficients for fiscal years 1997 through 2001 were quite small and not very significantly different from the reference category. However, during the final two fiscal years in the dataset, 2002 and 2003, the model produced coefficients that were both significant and positive, indicating increased odds of imprisonment for defendants sentenced during this period.

Thus, the year in which the defendant was sentenced exerted an independent influence on the in/out incarceration decision that significantly decreased the likelihood of incarceration at the beginning of the study and significantly increased the likelihood of incarceration at the end of the study. Fiscal year 2003 had the largest positive coefficient (.355), and fiscal year 1994 had the largest negative coefficient (-.246). In other words, defendants sentenced in fiscal year 1994 had the lowest probability of receiving a prison sentence (.782), while defendants in fiscal year 2003 had the highest probability of receiving a prison sentence (1.425).

In order to determine whether the coefficients were significantly different from one another, z scores were calculated between fiscal years 1993 and 2003 as well as between each of the ten consecutive pairs of fiscal years (Paternoster et al., 1998).[4] The obtained z score between fiscal years 1993 and 2003 was negative and significant. This value was larger than the critical t value, thus allowing for the null hypothesis of no difference between the coefficients produced for these two fiscal years to be rejected. Significant negative z scores were also obtained for four consecutive pairs of fiscal years between 1996 and 1997, 1999 and 2000, 2001 and 2002, and 2002 and 2003. Hence, these z scores demonstrate that the odds changed over time from a decreased likelihood to an increased likelihood of incarceration. Overall, defendants who were sentenced in

fiscal years 1993 had significantly different odds of receiving a sentence of incarceration than defendants who were sentenced in fiscal year 2003.

The Length-of-Term Decision (Overall Results)

The Effects of Gender and Race and Ethnicity

When the full model is regressed on the entire eleven-year data set combined, the regression coefficients for gender, race, and ethnicity are all significant (see Table 7.2). Overall, female defendants received a decrease in average sentence length of nearly six months compared to male defendants, holding all other variables in the model constant. In comparison to the reference category of white defendants, defendants in the black racial category received 3.79 months longer average sentence lengths. Hispanic defendants' average sentence length is 1.99 months longer than white defendants. Defendants in the "other" racial category received prison sentences 2.83 months longer than white defendants. Hence, among those defendants sentenced to a term of incarceration between fiscal years 1993 and 2003, the average sentence length was shortest among white defendants, followed by Hispanic and "other" race defendants, while black defendants received the longest average sentence length.

The Effect of Type of Conviction

The type of conviction (plea or trial) regression coefficient was positive and significant, and second only in magnitude to the presumptive sentence variable. Throughout the entire eleven-year period, the regression coefficient for this variable shows that, those defendants who were convicted by trial received a substantial increase

in average sentence length (32.4 months) compared to those defendants who pleaded guilty before going to trial. Similar to the incarceration outcome, defendants who are convicted by a trial receive additional penalties for taking advantage of their constitutional rights. In this case, it results in a sentence length more than two and one-half years longer than the average sentence length of defendants who pleaded guilty.

The Effect of Offense Type Category

Overall, when the full model was regressed on the entire eleven-year data set, all five of the crime type categories produced significant coefficients. These regression coefficients ranged from a decrease in the average sentence length of 9.5 months for larceny, embezzlement, theft, and money laundering offenses to an increase in the average sentence length of 10.8 months for robbery and firearms offenses. Interestingly, the category for robbery and firearms offenses produced the only positive coefficient while the other four categories each produced negative coefficients. Thus, compared to the reference category of other offenses, defendants convicted of offenses included in the four categories of fraud, deceit, and counterfeiting offenses, larceny, embezzlement, theft, and money laundering offenses, immigration offenses, and drug offenses each received decreased average sentence lengths.

The Effect of Judicial District Court Location

The district court location where the defendant was sentenced produced a wide range of regression coefficients. The district of Rhode Island was the excluded dummy variable for the 94 districts because it was located at the fiftieth percentile when the

districts were ranked by mean sentence length. There were 28 district court dummy regression coefficients that were not significant and 65 were significant. The significance of these regression coefficients indicates that geographic location of the federal district court did indeed significantly influence the average sentence length of the defendants in more than two-thirds of the district courts. The difference in average sentence length ranged from a decrease of 16.3 months in Pennsylvania East district court to an increase of 13.1 months in the Wisconsin West district court. More significant coefficients were negative (37) than were positive (28). Overall, this difference of more than two years in average sentence length ranges meted out to the defendants in the federal courts indicates that sentencing is not stable across the federal judicial district courts throughout the eleven fiscal years in the study period.

The Effect of Sentencing Year

The year of sentencing variable was included in the full model using ten dummy variables to represent each year (fiscal year 1998 was not included). These ten fiscal year dummy variables produced significant regression coefficients for five years: 1993, 1996, 1999, 2002, and 2003. Five of the ten fiscal years produced negative coefficients, indicating a relatively small decrease in the average sentence length of less than one month. In the final fiscal year of sentencing, 2003, the regression coefficient was positive and significant, indicating an increase in the average sentence length of 2.6 months. Thus, the year in which the defendant was sentenced positively influenced the length of term decision in the first fiscal year, 1993, but exerted a negative influence for the next few years. During the last three years of the study, between fiscal years 2001

through 2003, the sentencing year returned to exerting a positive influence on the length of term decision. In the final fiscal year, 2003, the effect was nearly four times as large as it had been a decade earlier.

In order to determine whether the coefficients were significantly different from one another, z scores were calculated between fiscal years 1993 and 2003 as well as between each of the ten consecutive pairs of fiscal years (Paternoster et al., 1998). First, a z score was calculated to determine whether the increase in mean sentence length of 0.7 months in fiscal year 1993 to 2.6 months in fiscal year 2003 was significant. The obtained z score was significant, indicating that the null hypothesis of no difference in regression coefficients could be rejected. The z score was also negative, opposite in direction to the predicted hypothesis that differences arising out of the year of sentencing variable would decrease over time, but instead the effect of year of sentencing *increased* over the study period. While the overall z score was negative, z scores that tested for differences in consecutive fiscal year pairs resulted in three negative significant scores. These three significant z scores were between fiscal year pairs 1996 and 1997, 2001 and 2002, and 2002 and 2003. These z scores indicate that this trend occurred in the last few years of the dataset rather than during all eleven years in the study period.

The Judicial Downward Departure Decision (Overall Results)

The Effects of Gender and Race and Ethnicity

The parameter estimates in the full model give an overall picture of the probability of receiving judicial downward departures in federal sentencing outcomes for all eleven fiscal years together. The parameter coefficients for each multinomial

regression model are displayed in Table 7.3. In the full model, the coefficient for gender shows that, compared to male defendants, female defendants have a higher expected probability of receiving a judicial downward departure relative to receiving no departure. In essence, female defendants are nearly one and one-half times as likely to receive a judicial downward departure as male defendants.

In addition, the coefficients for race and ethnicity variables show that Hispanic defendants have a decreased probability of receiving a judicial downward departure (0.909) compared to the reference category of white defendants. Black defendants (.728) and defendants in the "other" racial category (.724) have an even lower expected probability of receiving a judicial downward departure relative to receiving no departure when all other variables in the model are held constant.

The Effect of Type of Conviction

The coefficient for the type of conviction (plea or trial) resulted in intuitive changes in the effect of a one unit change on the log of the probability ratio. The effect of a trial conviction continued to hamper defendants as it did in the other two sentencing outcomes of whether to incarcerate and how long to incarcerate the defendant. As in the previous analyses, those defendants who pleaded guilty were the reference category for the type of conviction. Compared to them, those defendants who were found guilty by trial had significantly decreased odds of receiving a judicial downward departure relative to receiving no departure. This expected probability was decreased by a third (.672) for receiving a judicial downward departure relative to receiving no departure.

The Effect of Offense Type Category

Interestingly, those defendants who were sentenced for offenses that had the highest offense levels were also more likely to receive judicial downward departures while those defendants who were sentenced for offenses associated with lower offense levels were less likely to receive a judicial downward departure. The two crime type categories that produced significant negative coefficients, indicating a decreased likelihood of receiving a judicial downward departure, were the fraud, deceit, and counterfeiting offenses and the larceny, embezzlement, theft, and money laundering offenses. The three crime type categories that produced significant positive coefficients, indicating an increase in the likelihood of receiving a judicial downward departure, were the immigration offenses, drug offenses, and robbery and firearms offenses.

Notably, all of the coefficients for the five crime type categories were also significant. Defendants convicted of offenses in the larceny, theft, embezzlement, and money laundering category had the lowest probability of receiving a downward departure relative to receiving no departure (0.694). Defendants who were sentenced for immigration offenses had the highest probability of receiving a judicial downward departure relative to receiving no departure (1.421).

The Effect of Judicial District Court Location

In this regression model, the district of Pennsylvania East was selected to be the reference category because it fell in the fiftieth percentile when the districts were sorted based on their percentage of judicial downward departures. Overall, the majority (80) of the district courts where the defendant was sentenced produced significant coefficients,

indicating that geographic location exerted a significant effect on the sentencing outcome of whether to grant a judicial downward departure decision. Only 13 district court coefficients were not significant. Among the significant coefficients, three-fourths (62) were negative and one-fourth (18) were positive. Hence, the influence of location of the district court where the defendant was sentenced lowered the expected probability for defendants in many district courts, raised the expected probability for defendants in some other district courts, and had no impact on the expected probability for defendants in still a few other district courts for receiving judicial downward departures relative to receiving no departures. Among those district courts which produced significant negative coefficients, signaling lower or decreased probabilities of defendants sentenced in these courts receiving judicial downward departures, this decreased probability ranged from 0.179 for the district of Guam and 0.189 for the Wisconsin West district court to 0.852 for the district of Utah and 0.884 for the Ohio North district court. Among those district courts with significantly positive or increased probabilities, this ranged widely from 1.198 for the North Dakota district court to 9.329 for the Arizona district court.

The Effect of Sentencing Year

The coefficients representing the fiscal year of sentencing were all significant. Fiscal year 1998 was used as the reference category since it falls in the middle. The first five fiscal years (1993-1997) are all negative, but this decreases incrementally with each succeeding year. Then, beginning in fiscal year 1999, the coefficients are positive and significant. These positive coefficients increase in magnitude each year through fiscal year 2001. In fiscal year 2002, the coefficient is still positive and significant, but drops

down to levels of preceding fiscal years. Finally, for fiscal year 2003, the coefficient produced in the model is again negative and significant.

Thus, defendants sentenced in the first five fiscal years had decreased probabilities of receiving judicial downward departures relative to receiving no departure, but this decreased probability shrank with each fiscal year. Meanwhile, those defendants sentenced between 1999 and 2002 all had greater expected probabilities of receiving judicial downward departures relative to receiving no departure, and these probabilities increased each year. These results clearly show that fiscal year of sentencing exercises a significant and independent effect on the probability of receiving a judicial downward departure, emphasizing the need to study each subset of fiscal year data separately in order to analyze the effects of these variables over time.

This markedly discernable trend was reinforced with the overall obtained z score value of -15.774. This significant value allowed for the null hypothesis of no difference between fiscal years 1993 and 2003 to be rejected easily. The effect of sentencing year changed over time, or in other words, it exercised a significantly different effect on the judicial downward departure decision depending on the year in which the defendant was sentenced. This finding was underscored by the results of the tests of the regression coefficients for consecutive pairs of fiscal years. All ten pairs obtained significant z score values, indicating that significant changes occurred annually in the probability of receiving a judicial downward departure.

SECTION 2. Results of the Change Over Time Analysis

The In/Out Decision (Change Over Time Results)

The Effects of Gender and Race and Ethnicity

To examine the effects of gender and race and ethnicity on the incarceration decision over time, the full logistic regression model was regressed on each of the eleven individual fiscal years between 1993 and 2003. The corresponding parameter estimates of these eleven models are displayed in Table 7.4. For female defendants, the model produced significant negative coefficients during all eleven fiscal years. These negative coefficients indicate that gender exerted a significant effect on the incarceration decision throughout the entire study period. The size of the coefficients produced for each fiscal year suggests that differences in the likelihood of male and female defendants receiving a sentence of incarceration were experiencing a convergence between 1993 and 2000, when the smallest coefficient was produced. However, these differences began to diverge during the final three years of the study, returning to likelihood levels similar to that found in the first few years of the study.

The effect of race and ethnicity produced positive and significant coefficients for the incarceration decision, suggesting that minority status exerted an independent influence on the decision to incarcerate. Among black defendants, these positive coefficients were significant in eight of the eleven fiscal years. The coefficients produced for Hispanic defendants were similarly positive, indicating an increased probability of receiving a sentence of incarceration. However, all but one of the eleven coefficients for ethnicity were highly significant (FY 1995). The coefficients produced for the "other" racial category were positive in fiscal year 1993, but negative in the ten subsequent fiscal

years. Moreover, these coefficients were only sporadically significant, during four fiscal years in the middle period of the study (1996-1999) and during the final fiscal year, 2003. Thus, Hispanic defendants experienced the most significant and continuous effect on the probability of incarceration, followed closely by black defendants. Among defendants of other races, the race effect was only significant during a few years. However, it did change direction from an increased likelihood in fiscal year 1993 to negative and significant, indicating a decreased likelihood of incarceration, in fiscal year 2003.

To determine whether the coefficients were significantly different from one another, z scores were calculated between fiscal years 1993 and 2003 as well as between each of the ten consecutive pairs of fiscal years (Paternoster et al., 1998; Brame et al., 1998). The z test statistic facilitates the examination of the empirical relationship between two independent samples. For purposes of this study, the independent samples were different fiscal year subsets. Thus, z scores were calculated to verify whether the predicted differences in the incarceration decision due to gender, race, and ethnicity differences would diminish over time.

The results of the z tests calculated between the gender coefficients were negative and significant, indicating that the null hypothesis of equality between the coefficients for fiscal years 1993 and 2003 could be rejected. In other words, differences in the likelihood of receiving incarceration among female defendants did experience change over time. However, none of the ten matched pairs of consecutive fiscal years produced significant z scores. Thus, while the overall change was significant, the change from year to year was only incremental and not significant.

Obtained z scores for blacks, Hispanics, and defendants of "other" racial categories were all positive and significant, indicating that the influence of race and ethnicity did experience significant change over time. Additionally, z scores were calculated for each pair of consecutive fiscal years (see Table 7.2). These ten z scores were calculated to measure the significance of change from year to year. For black defendants, significant z scores were obtained between fiscal year pairs 1996 and 1997, 1997 and 1998, and 2001 and 2002. For both Hispanic defendants and "other" race defendants, one obtained z score for consecutive pairs of fiscal years was significant. For Hispanic defendants, this was between fiscal year pairs 1994 and 1995. For other race defendants, this was between 1999 and 2000.

The Effect of Type of Conviction

The variable representing a trial conviction produced positive coefficients when the full model was regressed on each individual fiscal year of data from 1993 through 2003 (see Table 7.5). These coefficients were significant in every year except one: fiscal year 2002. Thus, it appears that being found guilty by trial hindered those defendants in the upper zones of the sentencing table in almost every year of the data set, although the proportion of defendants who chose such a route were quite small.

The obtained z score between fiscal years 1993 and 2003 was not significant, indicating a failure to reject the null hypothesis that the coefficients were equivalent. The increased likelihood of receiving a sentence of incarceration for those defendants who were found guilty at trial remained relatively stable throughout the eleven years of the study. Indeed, none of the ten scores obtained for each pair of consecutive fiscal years

were significant. In other words, there was no significant change over time on the probability of incarceration owing to the influence exerted by the defendant's mode of conviction.

The Effect of Offense Type Category

Whether the likelihood of incarceration was increased or decreased by this variable depended on the category in which the offense was located. Similarly, the effect on the incarceration decision exerted by each crime type category varied when it was included in the full model and regressed on each individual fiscal year of data to determine what changes occurred over time (see Table 7.5). The crime type category representing fraud, deceit, and counterfeiting offenses produced positive coefficients in all eleven fiscal years, and was significant in all but one fiscal year, 1996. These coefficients grew in magnitude and significance over time, indicating an increasingly greater probability of receiving a sentence of incarceration over the study period. On the other hand, the category representing larceny, embezzlement, theft, and money laundering offenses produced negative coefficients for all eleven fiscal years. The coefficient for fiscal year 1996 was the only significant coefficient for the first seven years of the study, but the coefficients produced for the final four fiscal years were all significant. Hence, for this crime type, the probability of receiving a sentence of incarceration declined over time.

The category for immigration offenses was positive and significant during all eleven fiscal years, indicating a stable increase in the odds of being imprisoned for these types of offenses. Drug offenses also produced positive coefficients during all eleven

fiscal years, but these increased probabilities were only significant during five of the eleven fiscal years, namely, 1994, 1995, 1996, 1999, and 2003. The coefficients that were produced for the crime type category of robbery and firearms offenses began in the positive direction, indicating an increase in the probability of imprisonment, but ended in the negative direction, indicating a decrease in the probability of imprisonment. However, only two of the eleven coefficients were significant, for fiscal years 1994 and 2001. Thus, these fluctuating probabilities for robbery and firearms offenses did not exert a very significant influence on the incarceration decision except during two fiscal years near the beginning and end of the study.

To determine whether the coefficients were significantly different from one another, z scores were calculated between fiscal years 1993 and 2003 as well as between each of the ten consecutive pairs of fiscal years (Paternoster et al., 1998; Brame et al., 1998) for each crime type category. None of the crime type categories produced significant z scores between fiscal years 1993 and 2003, which would allow for the rejection of the null hypothesis of no difference between years.

When z scores were calculated for consecutive fiscal year pairs, the fraud, deceit, and counterfeiting category had two significant z scores, between fiscal year pairs 1996 to 1997 and 2000 to 2001. The larceny, embezzlement, theft, and money laundering offenses category produced one significant z score between fiscal years 1996 to 1997. The immigration offenses category produced five significant z scores pairs in the middle of the study period. Neither the drug offenses category nor the robbery and firearms offenses category produced any significant z scores during the study period. The overall lack of significant z scores demonstrates that the influence exerted by the type of offense

for which the defendant was sentenced on the decision to incarcerate did not undergo substantial change over time. For the most part, the influence of type of offense remained constant, except in the case of immigration offenses.

The Effect of Judicial District Court Location

When the full model was regressed on each individual fiscal year, the differences in odds ratios among the district courts appeared to be consistent over time. In other words, when the odds of receiving a non-prison sentence were lower for defendants in certain district courts, these odds continued to be lower than for defendants in other district courts across all the fiscal years in the data set. In fiscal year 1993, 65 of the 94 districts produced significant coefficients, and in fiscal year 2003, 69 of the 94 districts produced significant coefficients.

Whether the magnitude of district court coefficients was large enough to merit significance in the model fluctuated from year to year throughout the eleven fiscal year study period. During fiscal years 1996 and 1997, the district court variable only produced 16 and 13 significant coefficients respectively. However, during all other fiscal years in the study period, the number of significant coefficients produced in the full logistic model ranged from 38 in fiscal year 1999 to 87 in fiscal year 2001. Therefore, a large number of districts exerted a significant influence on the incarceration decision for most of the years included in the study period.

The obtained z scores for the difference in district coefficients were significant in just 17 of the 94 districts, indicating significant change over time. Eight of these were significant obtained z scores were positive and nine were negative. These significant z

scores were for the districts of Connecticut, Delaware, Louisiana East, Texas West, California Central, Oklahoma East, Oklahoma West, and Florida North. The nine districts with significant negative obtained z scores were Maryland, Ohio North, Indiana North, Wisconsin East, Arkansas West, Iowa North, Arizona, Guam, and Wyoming.

The Length-of-Term Decision (Change Over Time Results)

The Effects of Gender and Race and Ethnicity

During the eleven fiscal years in the data set, the general trend of the coefficients produced by the OLS regression model suggests that mean sentence length between genders decreased by approximately two months (see Table 7.6). Whereas the difference in average sentence length between male and female defendants was 6.8 months in fiscal year 1993, it was reduced to 4.9 months by fiscal year 2003. Notably, in every fiscal year, each of the obtained coefficients in mean sentence length between genders remained significant. Nor did the differences disappear by the end of the study period as hypothesized. A z test was conducted to determine whether there was a significant difference between the regression coefficients in fiscal years 1993 and 2003. The obtained z statistic was equal to the critical t value needed for significance, indicating that the null hypothesis of no difference between the two regression coefficients could be rejected. At the same time, however, these persistent differences in mean sentence length between genders do not support the prediction that this type of disparity would vanish under the promulgation and full implementation of the Sentencing Guidelines. This lack of substantial change is reinforced by the finding of non-significant z scores when each

consecutive pair of fiscal years was tested. None of the ten z scores was significant, indicating very minor fluctuations from year to year.

Analysis of the full OLS regression model over time revealed that, beginning in fiscal year 1993, the average sentence length of black defendants was 5.5 months longer than for white defendants (see Table 7.6). Likewise, the average sentence length of Hispanic defendants was 2.6 months longer than for white defendants in fiscal year 1993. Between 1993 and 1997, the mean sentence lengths for blacks and Hispanics did decrease, if somewhat unevenly. Thus, by fiscal year 1997, the mean sentence length for black defendants had decreased to 2.9 months longer than for white defendants, and the mean sentence length for Hispanic defendants had decreased to only 1.7 months longer than for white defendants. The last six fiscal years, from 1998 through 2003, portrayed a different picture of the average sentence length between defendants of different races and ethnicities. During these years, the mean sentence length of black defendants increased and held steady at around four months greater than for white defendants. Meanwhile, the mean sentence length for Hispanic defendants increased to a high of 3.1 months greater than for white defendants in fiscal year 2000 before dropping down to a low mark of just one and one-half months greater than white defendants in fiscal year 2003. Defendants in the "other" racial category were sentenced to terms 4.3 months greater than white defendants in fiscal year 1993, and this gradually decreased to 2.1 months greater than white defendants in fiscal year 2003.

Overall, neither the mean sentence lengths of black, Hispanic, nor "other" race defendants declined enough over the eleven fiscal years in the study period to converge with the mean sentence length of white defendants. A z test was performed for each

racial and ethnic category to verify whether the differences in mean sentence lengths between fiscal years 1993 and 2003 was significant enough to reject the null hypothesis of no difference between regression coefficients. For both Hispanic and "other" race defendants, the obtained z statistic was not significant, indicating a failure to reject the null hypothesis that significant differences in mean sentence length would change over time. For black defendants, the obtained z statistic was both positive and significant, indicating that the null hypothesis of no difference over time could be rejected. Thus, black defendants did experience a significant decrease in mean sentence length over time in comparison to similarly-situated white defendants.

The significance in the difference between the two regression coefficients for black defendants shared a similar pattern with the gender coefficients described above. When regression coefficients for consecutive pairs for fiscal years were tested, none of the ten resulting z scores for black defendants were significant. Only one obtained z score for Hispanic defendants was significant. This was for fiscal year pairs 2000 and 2001. The "other" race category of defendants also produced one significant z score between fiscal year pairs 1999 and 2000. Overall, the incremental changes from year to year for race and ethnicity were not significant. This finding of non-significance for each consecutive pair of fiscal years was relatively stable for black, Hispanic, and "other" race defendants.

The Effect of Type of Conviction

When the full model was regressed on each individual fiscal year, the coefficient for the type of disposition variable was significant during all eleven fiscal years (see

Table 7.7). This coefficient was also the largest positive coefficient in the model. Interpreting this coefficient, being found guilty by trial rather than pleading guilty increased the mean sentence length by as much as 26 to 36 months, depending on the year of sentencing. The largest coefficient was for this variable was produced in fiscal year 1996, when being found guilty by trial increased a defendant's average sentence length by 36.7 months. The smallest coefficient was produced in fiscal year 2001, indicating that being found guilty at trial increased the mean sentence length received by the defendant at sentencing by 26.6 months.

The regression coefficients for fiscal years 1993 and 2003 were nearly identical, increasing a defendant's sentence length by nearly 29 months for a trial conviction. When a z test was performed to test whether there was a significant difference between the regression coefficients for fiscal years 1993 and 2003, it was not significant, indicating that the null hypothesis of no difference could not be rejected. Therefore, the prediction that differences in mean sentence length, which occurred as a result of the mode of conviction, would disappear over time with the full implementation of the Guidelines was not supported by the coefficients produced in this analysis.

While the overall z score produced a non-significant statistic, six of the ten pair of consecutive fiscal years did produce significant differences. Three of these z scores were positive, and three were negative. The positive z scores were obtained for fiscal year pairs 1994 to 1995, 1996 to 1997, and 1999 to 2000. The negative z scores were obtained for fiscal year pairs 1993 to 1994, 1995 to 1996, and 2001 to 2002. These significant z scores indicate that the influence on sentence length exerted by the mode of conviction did fluctuate significantly from year to year.

The Effect of Offense Type Category

When the full OLS model was regressed on each individual fiscal year to measure the effects of offense type on sentence length over time, these models also produced some interesting results (see Table 7.7). Both the categories for fraud, deceit, and counterfeiting offenses and larceny, embezzlement, theft, and money laundering offenses produced negative coefficients in fiscal year 1993, indicating a decrease in the average sentence length of about three months. By fiscal year 2003, however, these negative coefficients had increased so that defendants convicted of these offense types received decreased average sentence lengths of about ten months. The coefficients produced for immigration offenses also increased over time, from -5.9 months in fiscal year 1993 to -7.2 months in fiscal year 2003. The coefficients produced for drug offenses were not significant for the first two years, but they also followed a similar pattern and became increasingly negative over time. By fiscal year 2003, drug offenses produced a significant coefficient of -5.8 months. The category of robbery and firearms offenses was the only category that declined over time. This category's coefficient was positive and indicated an increase in mean sentence length of 13.5 months in fiscal year 1993 but declined to 5.1 months in fiscal year 2003.

Obtained z statistics for each of these crime type categories between fiscal years 1993 and 2003 revealed that immigration offenses was the only category that did not produce a significant z score, indicating that coefficients produced by the other four categories were significantly different enough to reject the null hypotheses of no difference between regression coefficients over time. However, only the robbery and firearms offenses category was in the direction predicted by the hypothesis that the

coefficients would decrease over time. The other categories produced significant increases in their coefficients over time, contrary to the original hypothesized change.

All of the crime type categories produced at least one significant z score when the regression coefficients from consecutive pairs of fiscal years were tested. The fraud, deceit, and counterfeiting offenses category produced significant z scores between fiscal years 2000 and 2001 and 2002 and 2003. Both the larceny, embezzlement, theft, and money laundering offenses category and the drug offenses category produced a significant z score between fiscal years 1999 and 2000. The immigration offenses category produced two significant z scores: between fiscal years 1999 and 2000 and between 2000 and 2001. The robbery and firearms offenses category also produced two significant z scores: between fiscal years 1998 and 1999 and between 2000 and 2001.

The Effect of Judicial District Court Location

The coefficients representing the judicial district courts where the defendants were sentenced were analyzed over time by regressing the full OLS model on each individual fiscal year. The number of significant coefficients fluctuated from year to year. In fiscal year 1993, 21 district courts produced significant coefficients. In fiscal year 2002, 35 district courts produced significant coefficients, and 24 district courts produced significant coefficients in fiscal year 2003. The majority of these significant coefficients in each of the eleven fiscal years were negative. The direction and significance of these coefficients indicates that the geographic location of sentencing was indeed correlated with the mean sentence length for about one-third of judicial district courts by the end of the study period. Furthermore, during each fiscal year, significant

differences in sentence length occurred among the district courts. For example, in fiscal year 2003, these significant effects on the mean sentence length ranged from a decrease of more than six months for ten district courts to an increase of ten or more months for seven district courts.

A z test was conducted on each of the 94 district courts to determine whether there was a significant difference in the regression coefficients that were produced when the full model was regressed on fiscal years 1993 and 2003. Of these 94 test statistics, only ten obtained z scores were significant. Seven of these significant z scores were positive and three were negative. Overall, while a small handful of district courts experienced a significant difference in their effects on mean sentence length over time, only one district court reduced its significant effect of location on mean sentence length to a non-significant effect by fiscal year 2003 (North Carolina East).

The Judicial Downward Departure Decision (Change Over Time Results)

The Effects of Gender and Race and Ethnicity

For each fiscal year, coefficients were derived for female defendants in the full multinomial regression model compared to the reference category of male defendants (see Table 7.8). In all eleven fiscal years, the coefficients for female defendants were positive and significant, suggesting that female defendants had increased probabilities of receiving judicial downward departures compared to male defendants. This significant expected probability ranged from 1.324 in fiscal year 1999 to 1.631 in fiscal year 1994. The results of regressing the full model on each fiscal year demonstrate clearly that the expected probability of receiving judicial downward departures was significantly higher

for female defendants compared to male defendants relative to receiving no departure, and remained so for all eleven fiscal years of the data set.

To test the hypothesis that gender differences would become non-significant over time, a z score was calculated from the regression coefficients in fiscal years 1993 and 2003. The obtained z statistic was not significant (-1.431), indicating that there was no observed convergence in the probabilities over time. Moreover, consecutive pairs of fiscal years were also tested for differences between regression coefficients. None of the ten consecutive fiscal year pairs produced regression coefficients that were different enough to obtain a significant z score.

When the data set was divided by each of the eleven fiscal years and regressed through the multinomial logistic regression procedure, interesting trends over time in the effect of race and ethnicity on the decision to grant judicial downward departures emerged (see Table 7.8). Among black defendants, the coefficients representing the expected probability of receiving a judicial downward departure were negative and significant during every fiscal year. Hence, compared to white defendants, black defendants had a significantly decreased probability of receiving a judicial downward departure, regardless of the year of sentencing. This decreased likelihood over time was reinforced through the obtained z score which was used to test the null hypothesis of no differences between the regression coefficients in fiscal years 1993 and 2003. The z statistic was not significant (-0.039), indicating that the null hypothesis could not be rejected because there was no significant change over time in the probability of black defendants receiving a judicial downward departure. None of the obtained z scores for the ten pairs of consecutive fiscal years for black defendants were significant either.

The effect of ethnicity on the probability of Hispanic defendants receiving judicial downward departures compared to white defendants relative to receiving no departure showed more variation over time. The coefficients produced for Hispanic defendants were significant in all but five fiscal years—1997 through 2001. The coefficients were also negative during all eleven fiscal years. While the trend in the first few fiscal years indicated that the probability of receiving judicial downward departures were merging for white and Hispanic defendants, this trend did not carry over during the second half of the fiscal years in the data set. Instead, the differences in expected probabilities began to diverge, increasing the disparity between white and Hispanic defendants. Thus, for Hispanic defendants, the hypothesis of convergence was supported in the first half of the study, but was not supported by the data during the latter half of the fiscal years in the study.

Similarly, the obtained z score testing the difference between the regression coefficients in fiscal years 1993 and 2003 was not significant (-1.615), indicating that Hispanic defendants in fiscal year 2003 faced comparable decreased probabilities of receiving a judicial downward departure as they had faced eleven years earlier in fiscal year 1993. Nor were any of the obtained z scores for the ten pairs of consecutive fiscal years for Hispanic defendants significant either.

Finally, the effect of race of defendants in the "other" race category told a similar story. All of the eleven coefficients were negative, indicating a decreased likelihood of receiving a judicial downward departure at sentencing. These coefficients were significant in all fiscal years except one, 1996. Obtained z scores between fiscal years 1993 and 2003 were not significant, nor were the z scores that were calculated for the ten

consecutive fiscal year pairs. Thus, the odds of receiving a judicial downward departure for "other" race defendants experience very little change over time.

The Effect of Type of Conviction

Those defendants who were convicted by trial rather than pleading guilty had decreased probabilities of receiving a judicial downward departure relative to receiving no departure for all eleven fiscal years in the study (see Table 7.9). The coefficients produced by the full model were negative and significant for every fiscal year, and the probabilities ranged only from .718 in fiscal year 1993 to .549 in fiscal year 2003. Thus, defendants who were convicted in a trial proceeding were about one-third less likely to receive a judicial downward departure in fiscal year 1993, and this likelihood decreased further over time so that defendants who were convicted by trial in fiscal year 2003 were only half as likely to receive a judicial downward departure at sentencing.

The obtained z statistic for this set of coefficients was significant (2.414), indicating that the likelihood of receiving a judicial downward departure for those defendants who were found guilty by a trial did experience an overall change between fiscal year 1993 and 2003. The change between consecutive fiscal year pairs was quite small, however, so that none of the ten z scores were significant.

The Effect of Offense Type Category

When analyzed by fiscal year, the offense type category for which the defendant was sentenced portrays a similar picture to when the entire data set was analyzed together (see table 7.9). It also highlights the exceptional trend in judicial downward departures

for defendants sentenced for immigration offenses. The coefficients produced for the crime type category representing fraud, deceit, and counterfeiting offenses were negative in all eleven fiscal years, and significant in all but one year, namely fiscal year 2001. The coefficients produced for the crime type category representing larceny, embezzlement, theft, and money laundering offenses were negative and significant in all eleven fiscal years. The drug offenses category produced negative coefficients at either end of the study, but positive coefficients between fiscal years 1995 and 2002. Five of last six fiscal years in the study produced significant coefficients. The coefficients produced for the crime type category representing robbery and firearms offenses were positive during all eleven fiscal years except one, namely fiscal year 1997. Similar to the coefficients for drug offenses, the coefficients for robbery and firearms offenses were significant during the last six fiscal years. The coefficient for fiscal year 1993 was also positive and significant.

Meanwhile, the coefficients produced for the crime type category representing immigration offenses was significant in all but two of the eleven fiscal years. These coefficients were negative during the first three fiscal years in the study period (1993-1996), but changed direction and became mostly positive and significant in all eight succeeding fiscal years. This remarkable trend in the likelihood of receiving judicial downward departures for defendants sentenced for immigration crimes suggests that the sentencing officials were not in agreement with changes in penalties associated with immigration laws that took effect in the mid to late 1990s.

Moreover, this pronounced trend in the probability of receiving a judicial downward departure for defendants who are sentenced for immigration offenses was

confirmed through the use of a z test. The obtained z score for immigration offenses was significant (-8.091), indicating that the null hypothesis of no difference in the regression coefficients from fiscal year 1993 and 2003 could be rejected. In fact, the crime type category representing immigration offenses was the only category that obtained a significant z statistic, demonstrating that the probability of receiving a judicial downward departure, when convicted of an immigration offense, was significantly different in fiscal year 2003 than it was eleven years earlier in fiscal year 1993. The other four crime type categories did not obtain significant z scores, suggesting that the effects of these offenses on the likelihood of receiving a judicial downward departure was relatively stable over time when compared to the reference category.

When z tests were conducted on consecutive pairs of fiscal years, the fraud, deceit, and counterfeiting offenses category was the only category that did not produce any significant z scores. The regression coefficients for larceny, embezzlement, theft, and money laundering offenses category produced significant z statistics for three fiscal year pairs, 1995 to 1996, 2000 to 2001, and 2001 to 2002. The robbery and firearms offenses category produced one significant z scores, between fiscal year pairs 2002 to 2003. The significant obtained z scores for the immigration offenses category occurred in fiscal year pairs 1994 to 1995, 1997 to 1998, and in 1998 to 1999. The significant obtained z scores for the drug offenses category occurred in fiscal years 2000 to 2001 and in 2002 to 2003.

The Effect of Judicial District Court Location

The district court where the defendant was sentenced produced a substantially varied number of significant coefficients from year to year when the full model was regressed on each individual fiscal year. During three fiscal years, fewer than one-half of the 94 districts produced significant coefficients. During the other eight fiscal years, significant coefficients were produced by 52 to 75 of the districts. Thus, in every fiscal year, there were a substantial number of districts where the location of sentencing was significantly correlated with the probability of receiving a judicial downward departure relative to receiving no departure. Overall, defendants sentenced in one-third to two-thirds of district courts, depending on the fiscal year, experienced a geographic effect. In other words, holding all other factors constant, a defendant's likelihood of receiving a judicial downward departure relative to receiving no departure was significantly influenced by the geographic location of the sentencing court.

As a final test of the influence of district court location in the decision to grant a departure, z scores were calculated for all the districts to test whether their regression coefficients changed significantly over the eleven fiscal years in the study period. Significant z values were obtained for 52 of the district courts, the vast majority of which were positive (51 of the 52). This punctuated result suggests that the influence of district court location was not static over time for the majority of district courts. Rather, the influence of location on the departure decision altered between fiscal years 1993 and 2003, and many of these transformations were characterized by a marked change from non-significance to significance.

Summary of Findings

The results of these analyses present clear evidence that a number of factors are exerting a significant influence on the sentencing decision process, in addition to the final offense level score and criminal history category associated with the federal sentencing guidelines. The amount of influence these factors exerted in the sentencing decision was examined at three points: the decision whether or not to incarcerate, the decision regarding the length of the term of incarceration, and the decision regarding the bestowal of a judicial downward departure. Most importantly, these factors were measured in the aggregate using over a decade of sentencing data between fiscal years 1993 and 2003, as well as annually using individual fiscal year subsets to analyze changes which may have occurred over time. For this reason, the results of the multivariate analyses presented sentencing outcomes within the guidelines regime as both an overall portrait and as continuous snapshots that were produced over time. The outcome of this two-pronged approach was to capture the sentencing process as a continuously evolving mechanism during this period, promoted by the guideline's development and full hegemony in the federal court system.

The primary variables of interest to this study were the gender, race, and ethnicity of the defendants sentenced under the guidelines. These extra-legal characteristics were shown to have a significant influence on all three sentencing decisions, adding support to previous studies that have used smaller data sets, reduced time frames, or otherwise limited their data sets in various manners. While the overall findings were not very surprising, the way sentencing outcomes were influenced by these factors over time did produce some interesting results.

The influence of gender significantly influenced the incarceration decision throughout the entire study period, but the magnitude of its influence declined over time before increasing in strength during the final three years. At the same time, the significant influence of gender actually *increased* over time for the departure decision. Regarding the length-of-term decision, the influence of gender did diminish enough to merit a significant z score, but its diminished effects did not ever approach the hypothesized convergence with male defendants.

Likewise, the influence of race and ethnicity was significant in the overall analysis, but these effects eroded over time for the incarceration decision. However, neither the effect of race nor ethnicity exhibited substantial change over time in the departure decision. Black defendants experienced a significant decrease in mean sentence length in comparison to white defendants, but it did not experience the hypothesized convergence either. Meanwhile, Hispanic defendants did not experience a significant mean sentence length reduction in comparison to white defendants when analyzing the length of term decision over time.

The method of conviction (pleading guilty versus trial conviction) exercised a highly significant influence on all three decision-making points of sentencing. Defendants who were convicted by trial rather than pleading guilty experienced significantly harsher outcomes in the decision to incarcerate, the length of the prison term, and in the receipt of judicial downward departures. There was a slight decline in the effect of a trial conviction over time so that, after eleven years, the difference was significant, although the effect had still not diminished enough to become non-significant during the final fiscal year.

The type of offense for which the defendant was sentenced also exercised a significant influence on the three sentencing outcome decisions, but the amount of influence varied depending on the category. For the incarceration decision, only the category of fraud, deceit, and counterfeiting offenses exhibited significant change over time, but this was in the opposite direction predicted. Defendants sentenced for these offenses were more likely to receive a sentence of incarceration at the end of the study period than were defendants sentenced at the beginning.

For the length of term decision, all offense type categories except immigration exhibited significant change over time. However, only the change in the category of robbery and firearms offenses was in the direction predicted by the hypotheses. The other three crime type categories exhibited increased divergence over time. Finally, regarding the departure decision, immigration offenses was the only category to exhibit significant change over time, but this change was so dramatic that it converged within the first three years and then continued upward in a drastic divergence.

The geographic location of sentencing was captured by the district court variable and represented 94 distinct locations across the United States and its protected territories. In both the overall analysis and the year-by-year analysis, there were numerous districts that significantly influenced the sentencing outcomes of the defendants in their respective courts. For some districts, this effect was minimal, but for others it was surprisingly substantial. While this effect of location was not pronounced enough to radically alter the incarceration or length-of-term decisions over time, there was a significant difference over time in its influence on the departure decision.

The effect of time itself was the final variable of interest in the present study. For the incarceration decision, seven fiscal years produced significant coefficients, indicating that when the defendant was sentenced significantly influenced the probability of imprisonment. Nor did this influence diminish over time as originally hypothesized. The year of sentencing began and ended significantly for the length-of-term decision, but, in the interim, half of the fiscal years did not produce significant coefficients. The effect of fiscal year of sentencing on the length-of-term decision fluctuated quite a bit over the study period, and in the end, was in the direction of divergence rather than convergence. Lastly, the departure decision was significantly influenced by the fiscal year in which it occurred for every year in the study. It also exhibited significant change over time, but after converging in the first half of the study, it diverged in the opposite direction in the latter half.

TABLES

Table 7.1. Logistic Regression Models for In/Out Decision, FY1993-2003

	Model 1		Model 2		Model 3	
Variable	B / (S.E.)	Exp(B)	B / (S.E.)	Exp(B)	B / (S.E.)	Exp(B)
Female	-.715**	.489	-.431**	.650	-.393**	.675
	(.017)		(.019)		(.020)	
Black	.407**	1.503	.252**	1.286	.197**	1.218
	(.019)		(.021)		(.023)	
Hispanic	1.674**	5.335	1.106**	3.021	.353**	1.423
	(.018)		(.022)		(.030)	
Other Race	.366**	1.441	.318**	1.375	-.174**	.840
	(.031)		(.034)		(.040)	
Criminal History			.701**	2.017	.698**	2.009
			(.010)		(.011)	
Presumptive Sentence			.151**	1.163	.187**	1.206
			(.003)		(.004)	
Fraud Crimes			.447**	1.563	.432**	1.540
			(.027)		(.029)	
Larceny & Theft			-.246**	.782	-.221**	.801
			(.032)		(.033)	
Immigration			1.886**	6.592	1.257**	3.515
			(.033)		(.037)	
Drug Crimes			.469**	1.598	.270**	1.311
			(.034)		(.036)	
Robbery & Firearms			.115*	1.398	.010	1.010
			(.060)		(.063)	
Trial Conviction			.513**	1.670	.640**	1.897
			(.196)		(.058)	
2+ Conviction Counts			.169	1.184	.258**	1.294
			(.026)		(.028)	
Non-US Citizen					1.279**	3.594
					(.027)	
Age					-.004	.996
					(.005)	
Age^2					.000**	1.000
					(.000)	
Dependents – Yes					-.175**	.840
					(.019)	
Education Level 1					-	-
Education Level 2					-.270**	.764
					(.023)	
Education Level 3					-.341**	.711
					(.025)	
Education Level 4					-.417**	.659
					(.034)	

TABLES (continued)

Table 7.1 Logistic Regression Models for In/Out Decision, FY1993-2003 (continued)

	Model 1		Model 2		Model 3	
Variable	B / (S.E.)	Exp(B)	B / (S.E.)	Exp(B)	B / (S.E.)	Exp(B)
FY1993					-.226**	.798
					(.040)	
FY1994					-.246**	.782
					(.041)	
FY1995					-.181**	.834
					(.041)	
FY1996					-.227**	.797
					(.040)	
FY1997					-.046	.955
					(.039)	
FY1998					-	-
					-	
FY1999					-.078*	.925
					(.039)	
FY2000					.056	1.057
					(.039)	
FY2001					-.042	.959
					(.040)	
FY2002					.213**	1.237
					(.039)	
FY2003					.355**	1.425
					(.037)	
Block of 94 District Courts (see Appendix B)					-	-
Constant	-.951**	.386	-2.662**	.070	-.880**	.415
	(.012)		(.031)		(.140)	
N	95,810		95,810		95,810	
Nagelkerke R^2 Value	.174		.354		.436	
Model Prediction Rate	70.4%		75.4%		78.3%	

* p < .05 ** p < .01

Table 7.2. OLS Regression Models for Mean Sentence Length, FY1993-2003

	Model 1		Model 2		Model 3	
Variable	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B
Female	-29.619** (.361)	-.125	-4.985** (.186)	-.021	-5.426** (.185)	-.023
Black	36.455** (.292)	.223	4.505** (.152)	.028	3.786** (.163)	.023
Hispanic	-3.187** (.275)	-.021	2.006** (.158)	.013	1.985** (.198)	.013
Other Race	-.698 (.632)	-.002	1.573** (.323)	.004	2.832** (.351)	.007
Criminal History			1.240** (.038)	.029	1.116** (.039)	.026
Presumptive Sentence			.774** (.001)	.783	.772** (.001)	.782
Fraud Crimes			-8.448** (.286)	-.038	-7.392** (.287)	-.034
Larceny & Theft			-10.542** (.329)	-.034	-9.535** (.327)	-.031
Immigration			-6.137** (.304)	-.028	-6.341** (.317)	-.029
Drug Crimes			-3.369** (.257)	-.023	-3.446** (.258)	-.023
Robbery & Firearms			10.797** (.291)	.047	10.832** (.290)	.047
Trial Conviction			32.793** (.233)	.117	32.406** (.232)	.115
2+ Conviction Counts			14.722** (.145)	.084	15.550** (.147)	.089
Non-U.S. Citizen					1.430** (.180)	.009
Age					.220** (.033)	.031
Age^2					-.003** (.000)	-.034
Educ Level 1					-	-
Educ Level 2					-.390** (.139)	-.002
Educ Level 3					-1.923** (.172)	-.010
Educ Level 4					-3.811** (.276)	-.012

Table 7.2. OLS Regression Models for Mean Sentence Length, FY1993-2003 (cont.)

	Model 1		Model 2		Model 3	
Variable	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B
Dependents – Yes					-1.456** (.121)	-.010
FY1993					.696** (.285)	.002
FY1994					-.029 (.288)	.000
FY1995					-.453 (.290)	-.002
FY1996					-.733** (.281)	-.003
FY1997					.171 (.274)	.001
FY1998					-	-
FY1999					-.652** (.261)	-.003
FY2000					-.010 (.258)	-.000
FY2001					.337 (.256)	.001
FY2002					1.329** (.252)	.006
FY2003					2.601** (.248)	.012
Block of 94 District Courts (see Appendix B)					-	-
Constant	55.454** (.208)	-	1.856** (.264)	-	.589 (1.225)	-
R^2 Value	.069		.764		.771	

* p < .05 ** p < .01

Table 7.3. Multinomial Logistic Regression Models for Judicial Downward Departure Decision, FY1993-2003

	Model 1		Model 2		Model 3	
Variable	B / (S.E.)	Exp(B)	B / (S.E.)	Exp(B)	B / (S.E.)	Exp(B)
Female	.108**	1.114	.273**	1.314	.393**	1.481
	(.012)		(.013)		(.014)	
Black	-.496**	.609	-.608**	.544	-.318**	.728
	(.013)		(.014)		(.015)	
Hispanic	.696**	2.006	.321**	1.378	-.095**	.909
	(.010)		(.012)		(.016)	
Other Race	-.019	.981	-.037	.964	-.323**	.724
	(.024)		(.024)		(.027)	
Criminal History			.038**	1.038	.041**	1.042
			(.003)		(.003)	
Presumptive Sentence			.001**	1.001	.003**	1.003
			(.000)		(.000)	
Fraud Crimes			-.296**	.743	-.219**	.803
			(.020)		(.022)	
Larceny & Theft			-.452**	.637	-.365**	.694
			(.024)		(.026)	
Immigration			.556**	1.744	.351**	1.421
			(.020)		(.023)	
Drug Crimes			.159**	1.172	.111**	1.118
			(.018)		(.020)	
Robbery & Firearms			.014	1.014	.164**	1.178
			(.022)		(.024)	
Trial Conviction			-.495**	.610	-.398**	.672
			(.022)		(.024)	
2+ Conviction Counts			-.302**	.739	-.278**	.758
			(.013)		(.014)	
Non-U.S. Citizen					.153**	1.165
					(.014)	
Age					-.055**	.947
					(.002)	
Age^2					.001**	1.001
					(.000)	
Educ Level 2					-.009	.991
					(.012)	
Educ Level 3					.117**	1.124
					(.015)	
Educ Level 4					.360**	1.433
					(.021)	

Table 7.3. Multinomial Logistic Regression Models for Judicial Downward Departure Decision, FY1993-2003 (continued)

	Model 1		Model 2		Model 3	
Variable	B / (S.E.)	Exp(B)	B / (S.E.)	Exp(B)	B / (S.E.)	Exp(B)
Dependents – Yes					.061** (.010)	1.063
FY1993					-.687** (.027)	.503
FY1994					-.474** (.026)	.622
FY1995					-.401** (.025)	.670
FY1996					-.235** (.024)	.790
FY1997					-.104** (.022)	.901
FY1998					-	-
FY1999					.136** (.020)	1.145
FY2000					.191** (.020)	1.210
FY2001					.313** (.020)	1.367
FY2002					.186** (.020)	1.204
FY2003					-.157** (.020)	.855
Block of 94 District Courts (see Appendix B)					-	-
Constant	-1.849** (.008)	-	-1.810** (.018)	-	-1.196** (.065)	-
N	536,455		522,965		517,981	
Model Chi-Square Value	21,356.175**		87,759.879**		157,608.091**	
Nagelkerke R^2 Value	.047		.186		.315	
Model Prediction Rate	67.8%		67.6%		70.3%	

* $p < .05$ ** $p < .01$

TABLES (continued)

Table 7.4. Gender, Race, & Ethnicity Coefficients from the Full Logistic Regression Model for In/Out Decision by Fiscal Year

Fiscal Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Variable	B	B	B	B	B	B	B	B	B	B	B
Female	-.615**	-.562**	-.492**	-.498**	-.306**	-.300**	-.342**	-.190**	-.356**	-.347**	-.401**
S.E.	(.070)	(.074)	(.075)	(.073)	(.065)	(.068)	(.066)	(.066)	(.070)	(.065)	(.062)
Exp(B)	.540	.570	.612	.608	.737	.741	.711	.827	.701	.707	.669
Z Score		-.520	-.664	.057	-1.964	-.064	.443	-1.628	1.725	-.094	.601
Black	.362**	.299**	.172*	.184*	.327**	.002	.176*	.292**	.314**	.068	.096
S.E.	(.076)	(.079)	(.084)	(.086)	(.078)	(.082)	(.079)	(.079)	(.084)	(.078)	(.075)
Exp(B)	1.436	1.349	1.187	1.202	1.387	1.002	1.193	1.339	1.370	1.070	1.101
Z Score		.575	1.101	-.100	-1.232*	2.872*	-1.528	-1.038	-.191	2.146*	-.259
Hispanic	.517**	.480**	.137	.298**	.544**	.407**	.428**	.516**	.365**	.188*	.223**
S.E.	(.112)	(.115)	(.114)	(.111)	(.104)	(.107)	(.104)	(.099)	(.101)	(.092)	(.084)
Exp(B)	1.676	1.616	1.147	1.347	1.722	1.503	1.535	1.675	1.440	1.206	1.249
Z Score		.230	2.118	-1.012	-1.617	.918	-.141	-.613	1.068	1.296	-.281
Other Race	.261	-.113	-.198	-.363	-.282*	-.280*	-.441**	-.016	-.060	-.225	-.387
S.E.	(.140)	(.160)	(.148)	(.145)	(.131)	(.142)	(.140)	(.141)	(.133)	(.127)	(.127)
Exp(B)	1.299	.893	.821	.695	.754	.756	.643	.984	.941	.799	.679
Z Score		1.759	.390	.796	-.415	-.010	.807	-2.139*	.227	.897	.902
N	9,324	8,111	7,619	7,991	9,225	8,250	8,803	8,633	7,931	8,979	10,944
R^2 Value	.417	.404	.414	.444	.430	.466	.464	.494	.480	.486	.551
Predict Rate	80.7	80.5	80.1	79.2	78.3	79.4	79.6	79.3	79.4	78.6	80.5

* $p < .05$ ** $p < .01$

TABLES (continued)

Table 7.5. Conviction & Offense Type Coefficients from Full Logistic Regression Model for In/Out Decision by Fiscal Year

Fiscal Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Variable	B	B	B	B	B	B	B	B	B	B	B
Trial Cnvtn	.694**	.442**	.858**	.818**	.734**	.696**	.491*	.491*	.681**	.212	.408*
S.E.	(.146)	(.179)	(.193)	(.181)	(.189)	(.208)	(.217)	(.223)	(.256)	(.280)	(.205)
Exp(B)	2.002	1.557	2.359	2.265	2.083	2.005	1.634	1.634	1.976	1.236	1.504
Z Score		1.091	-1.580	.151	.321	.135	.682	.000	-.738	1.236	-.565
Fraud	.211*	.265*	.259*	.056	.491**	.489**	.646**	.614**	.284**	.529**	.490**
S.E.	(.099)	(.112)	(.107)	(.108)	(.098)	(.102)	(.095)	(.102)	(.099)	(.094)	(.094)
Exp(B)	1.235	1.304	1.296	1.057	1.634	1.631	1.908	1.848	1.328	1.697	1.633
Z Score		-.361	.039	1.335	-2.983*	.049	-1.062	.230	2.322*	-1.795	.903
Larceny	-.173	-.093	-.167	-.503**	-.156	-.186	-.164	-.274**	-.455**	-.340**	-.330**
S.E.	(.111)	(.123)	(.119)	(.123)	(.110)	(.116)	(.115)	(.117)	(.117)	(.002)	(.108)
Exp(B)	.841	.911	.846	.605	.856	.830	.849	.760	.635	.712	.719
Z Score		-.483	.432	1.963	-2.103*	.188	-.135	.671	1.094	-.716	-.065
Immigr.	1.020**	1.369**	1.264**	.848**	1.372**	1.793**	1.521**	1.491**	.996**	1.364**	1.323**
S.E.	(.135)	(.152)	(.146)	(.132)	(.122)	(.135)	(.125)	(.129)	(.130)	(.125)	(.117)
Exp(B)	2.774	3.932	3.539	2.336	3.943	6.006	4.578	4.442	2.706	3.911	3.756
Z Score		-1.717	.498	2.114*	-2.915*	-2.314*	1.478	.167	2.703*	-2.041*	.239
Drugs	.217	.369**	.378**	.351**	.157	.114	.277*	.235	.219	.023	.259*
S.E.	(.119)	(.137)	(.135)	(.135)	(.128)	(.135)	(.121)	(.129)	(.120)	(.115)	(.107)
Exp(B)	1.242	1.446	1.459	1.421	1.170	1.121	1.319	1.265	1.245	1.023	1.296
Z Score		-.838	-.047	.141	1.043	.231	-.899	.237	.091	1.179	-1.502
Robbery	.182	.471*	.129	.094	.264	-.488	.201	-.362	-.527*	.045	-.261
S.E.	(.170)	(.209)	(.259)	(.241)	(.274)	(.286)	(.245)	(.234)	(.227)	(.190)	(.180)
Exp(B)	1.200	1.601	1.138	1.099	1.302	.614	1.223	.696	.590	1.046	.770
Z Score		-1.073	1.028	.099	-.466	1.899	-1.830	1.662	.506	-1.932	1.169

* $p < .05$ ** $p < .01$

TABLES (continued)

Table 7.6. Gender, Race, & Ethnicity Coefficients from the Full OLS Regression Model for Mean Sentence Length by Fiscal Year, FY1993 – FY2003

Fiscal Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Variable	Unstnd. B	Unstnd. B	Unstnd. B	Unstnd. B	Unstnd. B	Unstnd. B	Unstnd. B	Unstnd. B	Unstnd. B	Unstnd. B	Unstnd.B
Female	-6.760**	-5.318**	-6.595**	-5.131**	-5.026**	-4.998**	-5.602**	-5.228**	-5.647**	-5.455**	-4.930**
S.E.	(.781)	(.811)	(.778)	(.727)	(.662)	(.619)	(.558)	(.541)	(.527)	(.506)	(.490)
Stnd. B	-.025	-.020	-.026	-.020	-.020	-.021	-.025	-.024	-.027	-.025	-.021
Z Score		-1.281	1.136	-1.375	-.107	-.031	.725	-.481	.555	-.263	-.745
Black	5.500**	4.036**	4.859**	3.433**	2.949**	3.102**	3.599**	4.296**	3.789**	4.293**	3.790**
S.E.	(.630)	(.664)	(.673)	(.640)	(.587)	(.570)	(.520)	(.502)	(.482)	(.448)	(.428)
Stnd. B	.031	.023	.028	.020	.017	.019	.022	.028	.025	.028	.024
Z Score		1.599	-.871	1.535	.557	-.187	-.644	-.964	.729	-.766	.812
Hispanic	2.605**	2.976**	2.198**	1.953*	1.693*	1.588*	2.478**	3.131**	1.464**	1.796**	1.443**
S.E.	(.850)	(.881)	(.863)	(.812)	(.731)	(.701)	(.617)	(.590)	(.557)	(.510)	(.480)
Stnd. B	.014	.016	.012	.011	.010	.010	.017	.022	.011	.013	.010
Z Score		-.303	.631	.207	.238	.105	-.954	-.765	2.055*	-.440	.504
Other Race	4.262**	2.977	3.220*	2.013	1.603	3.268**	.426	4.944**	4.242**	3.970**	2.087*
S.E	(1.589)	(1.587)	(1.439)	(1.324)	(1.191)	(1.159)	(1.079)	(1.038)	(1.032)	(.970)	(.916)
Stnd. B	.009	.006	.008	.005	.004	.009	.001	.013	.011	.010	.005
Z Score		.572	-.113	.617	.230	-1.001	1.794	-3.018*	.480	.192	1.411
Constant	-13.721**	-3.732	4.561	.331	.221	8.286*	-2.205	-.841	.474	7.880*	2.967
S.E.	(4.368)	(4.621)	(4.653)	(4.569)	(4.418)	(4.230)	(4.024)	(3.593)	(4.000)	(3.286)	(3.458)
N	28,276	27,310	26,507	29,523	32,303	34,716	39,305	41,699	43,604	46,490	51,056
R^2 Value	.771	.771	.771	.771	.788	.771	.775	.764	.748	.772	.792

* $p < .05$ ** $p < .01$

TABLES (continued)

Table 7.7. Conviction & Offense Type Coefficients from the Full OLS Regression Model for Mean Sentence Length by FYr

Fiscal Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Variable	Unstd. B	Unstd. B	Unstd. B	Unstd. B	Unstd. B	Unstd. B	Unstd. B	Unstd. B	Unstd. B	Unstd. B	Unstd. B
Trial Cnvtn.	28.943**	35.334**	33.020**	36.672**	33.684**	33.347**	33.684**	29.123**	26.632**	30.537**	28.843**
S.E.	(.729)	(.818)	(.852)	(.801)	(.786)	(.774)	(.766)	(.771)	(.866)	(.849)	(.678)
Stnd. B	.126	.139	.126	.141	.122	.129	.115	.096	.078	.083	.092
Z Score		-5.833*	1.959	-3.123*	2.663*	-1.508	1.540	4.187*	2.145*	-3.219*	1.558
Fraud	-5.997**	-6.109**	-5.089**	-6.132**	-6.283**	-7.175**	-7.583**	-6.034**	-9.064**	-8.216**	-10.973**
S.E.	(1.189)	(1.225)	(1.133)	(1.096)	(.992)	(.990)	(.874)	(.859)	(.858)	(.794)	(.764)
Stnd. B	-.025	-.026	-.023	-.027	-.028	-.032	-.035	-.029	-.045	-.039	-.048
Z Score		.066	-.611	.662	.102	.636	.313	-1.275	2.502*	-.726	2.500*
Larceny	-4.805**	-8.140**	-6.623**	-9.967**	-10.807**	-10.969**	-12.677**	-8.473**	-9.927**	-9.623**	-9.943**
S.E.	(1.258)	(1.326)	(1.272)	(1.230)	(1.110)	(1.099)	(1.042)	(1.001)	(1.031)	(.960)	(.909)
Stnd. B	-.017	-.027	-.022	-.032	-.036	-.037	-.039	-.028	-.031	-.029	-.029
Z Score		1.825	-.826	1.890	.507	.104	1.124	-2.906*	1.013	-.217	.241
Immigr.	-5.857**	-7.232**	-7.694**	-7.589**	-6.879**	-7.336**	-7.477**	-4.547**	-7.438**	-6.014**	-7.237**
S.E.	(1.574)	(1.607)	(1.442)	(1.315)	(1.173)	(1.104)	(.951)	(.915)	(.918)	(.841)	(.778)
Stnd. B	-.015	-.019	-.025	-.028	-.026	-.032	-.037	-.024	-.039	-.033	-.042
Z Score		.611	.214	-.054	-.403	.284	.093	-2.219*	2.234*	-1.145	1.069
Drugs	1.424	-.245	-2.447*	-3.146**	-4.251**	-4.761**	-5.520**	-2.468**	-4.185**	-4.517**	-5.826**
S.E.	(1.069)	(1.125)	(1.038)	(.996)	(.911)	(.897)	(.783)	(.772)	(.772)	(.703)	(.668)
Stnd. B	.009	-.001	-.015	-.020	-.027	-.032	-.038	-.018	-.031	-.033	-.042
Z Score		1.075	1.439	.486	.819	.399	.632	-2.778*	1.580	.316	1.354
Robbery	13.503**	13.409**	13.271**	15.391**	14.909**	13.996**	9.268**	11.312**	8.484**	6.486**	5.110**
S.E.	(1.185)	(1.233)	(1.159)	(1.121)	(1.039)	(1.014)	(.914)	(.884)	(.869)	(.791)	(.739)
Stnd. B	.056	.056	.056	.063	.059	.059	.038	.050	.041	.031	.025
Z Score		.055	.082	-1.315	.315	.629	3.461*	-1.607	2.284*	1.700	1.270

* $p < .05$ ** $p < .01$

TABLES (continued)

Table 7.8. Gender, Race, & Ethnicity Coefficients from the Full Multinomial Logistic Regression Model for the Judicial Downward Departure Decision by Fiscal Year

Fiscal Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Variable	B	B	B	B	B	B	B	B	B	B	B
Female	.363**	.489**	.448**	.481**	.370**	.359**	.281**	.393**	.390**	.421**	.467**
S.E.	(.060)	(.058)	(.058)	(.052)	(.049)	(.046)	(.041)	(.040)	(.039)	(.040)	(.041)
Exp(B)	1.437	1.631	1.565	1.618	1.448	1.432	1.324	1.481	1.477	1.524	1.595
Z Score		-1.510	.500	-.424	1.554	.164	1.266	-1.955	.054	-.555	-.803
Black	-.306**	-.359**	-.318**	-.359**	-.267**	-.314**	-.301**	-.295**	-.290**	-.282**	-.303**
S.E.	(.061)	(.061)	(.063)	(.059)	(.055)	(.053)	(.047)	(.046)	(.045)	(.045)	(.046)
Exp(B)	.736	.698	.728	.698	.766	.731	.740	.744	.748	.754	.738
Z Score		.614	-.468	.475	-1.141	.615	-.184	-.091	-.078	-.126	.326
Hispanic	-.282**	-.221**	-.149*	-.145*	-.038	-.020	-.089	-.074	-.013	-.115**	-.136**
S.E.	(.079)	(.075)	(.071)	(.065)	(.059)	(.056)	(.049)	(.047)	(.044)	(.044)	(.044)
Exp(B)	.754	.802	.862	.865	.963	.980	.915	.929	.987	.892	.873
Z Score		-.560	-.697	-.042	-1.219	-.221	.927	-.221	-.947	1.639	.337
Other Race	-.474**	-.356**	-.294**	-.045	-.438**	-.470**	-.360**	-.215**	-.370**	-.283**	-.278**
S.E.	(.128)	(.121)	(.110)	(.095)	(.095)	(.090)	(.084)	(.078)	(.082)	(.081)	(.081)
Exp(B)	.623	.701	.746	.956	.645	.625	.698	.807	.691	.753	.757
Z Score		-.670	-.379	-1.713	2.925*	.245	-.894	-1.265	1.370	-.755	-.044
N	38,161	36,317	35,232	39,215	44,209	45,860	51,230	53,651	53,531	57,149	63,426
R^2 Value	.314	.289	.304	.306	.300	.347	.347	.340	.343	.354	.325
Predict Rate	70.3	73.4	72.7	71.4	69.3	69.5	69.5	69.3	69.0	69.7	71.2

* $p < .05$ ** $p < .01$

TABLES (continued)

Table 7.9. Conviction & Offense Type Coefficients from the Full Multinomial Logistic Regression Model for the Judicial Downward Departure Decision by Fiscal Year

Fiscal Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Variable	B	B	B	B	B	B	B	B	B	B	B
Trial Cnvtn	-.332**	-.372**	-.434**	-.366**	-.440**	-.423**	-.320**	-.411**	-.476**	-.593**	-.600**
S.E.	(.077)	(.084)	(.089)	(.079)	(.080)	(.077)	(.072)	(.074)	(.083)	(.092)	(.080)
Exp(B)	.718	.689	.648	.693	.644	.655	.726	.663	.622	.553	.549
Z Score		.351	.507	-.571	.658	-.153	-.977	.881	.585	.944	.057
Fraud	-.229**	-.185*	-.300**	-.212**	-.360**	-.309**	-.191**	-.137*	-.069	-.185**	-.227**
S.E.	(.088)	(.087)	(.085)	(.080)	(.074)	(.074)	(.066)	(.065)	(.067)	(.066)	(.067)
Exp(B)	.795	.831	.741	.809	.698	.735	.827	.872	.934	.831	.797
Z Score		-.356	.945	-.754	1.358	-.487	-1.190	-.583	-.728	1.233	.447
Larceny	-.406**	-.430**	-.530**	-.209*	-.394**	-.432**	-.236**	-.394**	-.163*	-.555**	-.428**
S.E.	(.098)	(.100)	(.100)	(.090)	(.074)	(.085)	(.082)	(.080)	(.081)	(.083)	(.080)
Exp(B)	.666	.651	.588	.811	.698	.649	.790	.674	.850	.574	.652
Z Score		.171	.707	-2.386*	1.494	.316	-1.660	1.379	-2.029*	3.380*	-1.102
Immigr.	-.768**	-.663**	-.162	.015	-.166*	.250**	.520**	.630**	.709**	.535**	.503**
S.E.	(.143)	(.131)	(.109)	(.091)	(.081)	(.079)	(.070)	(.068)	(.068)	(.067)	(.065)
Exp(B)	.464	.515	.850	1.015	.847	1.284	1.682	1.877	2.033	1.707	1.653
Z Score		-.541	-2.940*	-1.247	1.486	-3.677*	-2.558*	-1.127	-.821	1.823	.343
Drugs	-.103	-.076	.052	.040	.066	.145*	.210**	.103	.275**	.178**	-.078
S.E.	(.084)	(.087)	(.082)	(.076)	(.070)	(.069)	(.061)	(.060)	(.061)	(.060)	(.059)
Exp(B)	.902	.927	1.053	1.041	1.068	1.156	1.233	1.108	1.316	1.195	.927
Z Score		-.223	-1.071	.107	-.252	-.804	-.706	1.251	-2.010*	1.134	3.018*
Robbery	.203*	.006	.177	.072	-.026	.161*	.224**	.190**	.245**	.343**	.045
S.E.	(.096)	(.097)	(.094)	(.091)	(.085)	(.083)	(.075)	(.072)	(.073)	(.069)	(.069)
Exp(B)	1.225	1.006	1.193	1.021	.974	1.174	1.251	1.209	1.278	1.409	1.046
Z Score		1.444	-1.266	1.192	.377	-1.574	-.563	.327	-.536	-.976	3.054*

* $p < .05$ ** $p < .01$

Chapter VIII. DISCUSSION AND CONCLUSION

Summary of Key Findings

The results of this analysis of multiple years of federal sentencing data have been generated from an in-depth study of three main decision-making points for federal district court judges at sentencing, namely the in/out imprisonment decision, the length of incarceration decision, and the judicial downward departure decision. The study results have illuminated how the promulgation of the federal Sentencing Guidelines has influenced the sentencing decisions of these judges over time, while simultaneously limiting their discretion and making the decision process more transparent. These results have, in part, confirmed important findings of earlier studies, as well as revealed the emergence of significant trends which should stimulate further research in the future.

Taken as a whole, the results suggest that the Sentencing Guidelines have not succeeded in eliminating disparities in sentencing outcomes due to extralegal factors with the passage of time. Instead, the simple, straightforward proposal of sentencing convicted offenders according to the characteristics of the offense rather than the characteristics of the offender has run into the complicated, three-dimensional actuality of sentencing in real life with real people. Hence, an improved understanding of how federal judges have managed to balance the constraints imposed upon their sentencing decisions while, at the same time, trying to mete out a just and fair punishment is, perhaps, the most important result of this study.

Sentencing data compiled by the U.S. Sentencing Commission for fiscal years 1993 through 2003 were selected for this study. These eleven years contain sentencing information for nearly 600,000 offenders sentenced in U.S. federal district courts during

this period. This data set was analyzed in two ways: as one whole data set and as separate individual fiscal year data sets in order to analyze change over time. Owing to this temporal feature of the data set, the longitudinal focus of the study took center stage in the analysis. Therefore, each hypothesis was examined in the context of how disparities arising out of the judge's sentencing decision-making processes varied across the eleven fiscal years included in the study. Whether the predictions of this study were supported or not supported by the findings of this study is summarized in a rather simplified form in Table 8.1.

Taken as a whole, the findings from all three sentencing outcomes leads to the conclusion that racial inequality persists in federal sentencing outcomes. In the aggregate analysis, black defendants were more likely to receive a sentence of incarceration, more likely to receive a longer term of incarceration, and less likely to receive a judicial downward departure. For both the incarceration decision and the length-of-term decision, the magnitude of the coefficients declined somewhat over time when analyzed across the eleven years in the study period (see Table 8.2). Meanwhile, for the judicial downward departure decision, the decreased likelihood of black defendants receiving a departure did not experience any change over time. Thus, by fiscal year 2003, black defendants still were more likely to receive significantly longer sentences and less likely to receive a judicial downward departure. The unwarranted disparity attributable to race has not gone away with the passage of time. Similar to the findings of Kautt and Spohn (2002), this study finds that the Guidelines have been unable to curtail the effects of race on all the sentencing outcomes. Instead, they retain a strong influence over sentencing outcomes, particularly in the case of judicial downward departures.

The influence of ethnicity was even more pronounced than the influence of race, thus highlighting the importance of studying the outcomes of Hispanic defendants in the federal court system. Overall, Hispanic defendants were significantly more likely to receive a sentence of incarceration than both black and white defendants. Likewise, the influence of ethnicity significantly increased the length of the term of incarceration, and decreased the likelihood of receiving a judicial downward departure. While the effect of ethnicity on the incarceration decision declined over time, it still exerted a substantial and significant effect at the end of the study (see Table 8.3). This same trend was observed in the length of term decision and the judicial downward departure decision. As Hebert (1997) suggests, federal district court judges appear to be responding to the perceived dangerousness of offenders on the basis of their racial or ethnic background, while at the same time, acting within the constraints imposed by a highly structured determinate sentencing system. Hence, any study that examines only the outcomes of black defendants in the context of an analysis of minority defendants would be excluding an important set of predictors.

These findings concerning the influence of race on the sentencing outcomes of black and Hispanic defendants only offers partial support for the prediction in hypothesis 1(a). The probability of receiving a sentence of incarceration declined over time for both black and Hispanic defendants. The odds ratio for black defendants became non-significant during the final two fiscal years in the study; the odds ration for Hispanic defendants did not. Contrary to the hypothesis, however, the odds of Hispanic defendants receiving a sentence of incarceration was higher than for black defendants, and they continued to experience higher probabilities throughout the length of the study period.

The prediction in hypothesis 2(a) was supported by the finding that the influence of race for black defendants influenced the probability of receiving a longer sentence length than either Hispanic or white defendants. As predicted, these heightened probabilities declined over time; only the decline for black defendants was significant, although still very different in magnitude from the reference category. While the direction of the coefficients for both black and Hispanic defendants supports the prediction of convergence over time, neither set of odds ratios decreased sufficiently in magnitude to suggest that any convergence was imminent.

Findings concerning the influence of race and ethnicity on the judicial downward departure decision did not support the predictions in hypothesis 3(a). Certainly, black defendants had lower odds of receiving a judicial downward departure, and these probabilities remained lower throughout the study period. However, contrary to the prediction, there was no change over time. For Hispanic defendants, the magnitude of the coefficients indicated a gradual increase in the probability of receiving a judicial departure in the first half of the study, but the direction of the coefficients remained negative and began declining again at the end of the study. Hence, contrary to the prediction, Hispanic defendants did not experience any significant change over time in the probability of receiving a judicial downward departure.

Female defendants fared much better than racial and ethnic minorities in the sentencing outcomes. Evidence of chivalrous treatment of women in general emerged in all three sentencing decisions of this study. Female defendants were less likely to be sent to prison than male defendants. If they were sent to prison, the average length of their

prison sentence was shorter than male defendants. They were also more likely to receive judicial downward departures (see Table 8.4).

These findings concerning the sentencing outcomes of female defendants provide partial support for the predictions in hypotheses 1(b) and 2(b). The odds of a female defendant receiving a sentence of incarceration did change over time in the direction of the predicted convergence with the reference category. However, in the final year of the study, the probabilities for female defendants were still substantially lower than for male defendants. Likewise, the mean sentence length of female defendants changed over time in the direction of the predicted convergence, but, again, the differences in the magnitude of the coefficients for female defendants at the end of the study remained substantially lower than the reference category. Finally, the findings concerning the odds of receiving a judicial downward departure were contrary to the prediction in hypothesis 3(b). The coefficients for female defendants changed over time by diverging away from the reference category and *increasing* in magnitude so that female defendants at the end of the study were even more likely to receive a judicial downward departure than they were at the beginning of the study period in fiscal year 1993.

Defendants who were convicted by a trial proceeding were penalized harshly in all three sentencing outcomes. Being convicted at trial rather than pleading guilty significantly increased the likelihood of receiving a prison sentence, of receiving a significantly longer prison sentence, and significantly decreased the likelihood of receiving a judicial downward departure. The correlation between the mode of conviction and its effects on the sentencing outcome was constant throughout the study period. These findings support earlier research findings in both state and federal courts of

defendants who do not plead guilty being disadvantaged at the sentencing stage (Johnson, 2005; Semisch, 2000; Smith and Damphouse, 1998; Ulmer and Johnson, 2004), as well as buttressing courtroom efficiency workgroup theory.

These findings regarding defendants who are found guilty through a trial did not support the predictions of the direction of change over time in hypotheses 4(a), 4(b), or 4(c). Defendants who were found guilty through a trial process were just slightly less likely to receive a sentence of incarceration at the end of the study period than they were at the beginning of the study period, but the overall direction of the coefficients was not toward convergence. In fact, during some years, the magnitude of the coefficients was even larger, suggesting an even greater increase in the likelihood of being sentenced to prison. Similarly, the increase in mean sentence length for defendants who were found guilty by a trial did not converge over time. Instead, for eight of the nine intervening years, the coefficients were even greater in magnitude, suggesting a fluctuating drive toward divergence over time.

The directional trend of the coefficients for the judicial downward departure decision did change over time, but toward divergence, not convergence. Again, this change is in the opposite direction to the hypothesized prediction. The magnitude of the probability for receiving a judicial downward departure declined significantly over time so that defendants at the end of the study were much less likely to receive judicial downward departures than they were in the beginning of the study.

One of the most interesting findings of the study concerned the sentencing outcomes of defendants who were sentenced for immigration crimes. This particular offense type category exerted a more constant and definitive effect than any other

category of offenses. Defendants sentenced for immigration crimes were significantly more likely to receive a sentence of incarceration, but the length of term of incarceration was significantly decreased. Moreover, the magnitude of both of these significant effects *increased* over time. However, the effect of this crime type category on the judicial downward departure decision and its trend over time was particularly fascinating. While defendants sentenced for immigration offenses were less likely to receive a judicial downward departure during the initial years, this probability subsequently changed direction and significantly increased the odds of receiving a judicial downward departure during the latter half of the study period.

The other interesting finding concerning the crime type category was for drug offenses. Although not to the same degree of magnitude, but similar to defendants sentenced for immigration offenses, defendants sentenced for drug crimes were more likely to be incarcerated, and when incarcerated, their length of term was significantly lower than expected. This decrease in the length of term of incarceration was significantly enlarged over time. The effect exerted by the drug offenses category on the judicial downward departure decision was only significant during the latter half of the study period, and all but the last one of these coefficients were positive, indicating an increased likelihood of receiving a judicial downward departure. Hence, judicial downward departures appear to be growing in importance for offenders being sentenced for drug offenses in the federal system. This finding speaks to the need for further investigation into the trend for substantial assistance departures in this same area, since one type of downward departure seems to offset the other.

This finding also speaks to the trend of the exploding population of female drug offenders being sentenced in the federal courts. In their study, Griffin and Wooldredge (2006) have proposed that a new focal concern has emerged surrounding female drug offenders with children to incarcerate women more frequently in order to protect the children. In their discussion, they draw upon the findings of Spohn (1999) to emphasize that women convicted of drug crimes do not receive the same leniency as women convicted of less serious property crimes. Therefore, they might not enjoy any benefit of chivalry, particularly if their involvement with a drug-addicted lifestyle is viewed by the judge as detrimental to the children within their care (Bush-Baskette, 2000; Chesney-Lind and Pollack, 1995; Daly, 1987; Steffensmeier, Kramer, and Streifel, 1993; Wicharaya, 1995).

These findings concerning the type of offense for which the defendant was sentenced do not support the prediction of hypothesis 5(a), but they do lend some support to the predictions of hypotheses 5(b) and 5(c). Regarding the incarceration decision, none of the coefficients produced for the crime type categories experienced significant change over time. The directional trend of the coefficients in the three categories of fraud, deceit, and counterfeiting offenses, larceny, embezzlement, theft, and money laundering offenses, and immigration offenses instead suggests a slight divergence, although the magnitude of these changes was not strong enough to reach statistical significance.

All of the crime type categories experienced substantial change over time in the length-of-term sentencing outcome, although the category of immigration offenses did not reach the level of statistical significance for its amount of change. Only the category

of robbery and firearms offenses changed in the direction predicted, toward convergence. All of the other categories diverged further away from the mean sentence length, increasing in magnitude and strength over time rather than decreasing over time.

On the other hand, regarding the judicial downward departure decision, the category of immigration offenses was the only category to experience change over time in the magnitude of its coefficients. Also, the two categories of drug offenses and robbery and firearms offenses changed the strength of their coefficients over time, although the overall magnitude was not altered. Notably, the directional trend for the immigration offenses category coefficients was toward convergence the first half of the study, but then continued upward, increasing in magnitude, in a divergent trend during the latter half of the study period.

The findings of this study showed that the geographic location of the district court of sentencing has proven to be a significant source of extralegal disparity for all three sentencing outcomes. It is at the district court level that the sentencing decisions originate (Kautt, 2002). The narrower focus on individual districts also allowed for an examination of variation between the district courts within each of the eleven circuits, uncovering effects which would have otherwise remained obscured by not delving below the circuit level (see, for instance, Albonetti, 1997; Kautt and Spohn, 2002; Steffensmeier and DeMuth, 2000). Overall, the Guidelines have failed to create uniform sentences throughout the federal courts. This finding severely undermines the ability of the Guidelines to achieve the goals for which they were enacted—to promote equity and fairness in sentencing through uniformity across geographic location.

Overall, these findings concerning the influence of district court location do not provide much support for the predictions of hypotheses 6(a), 6(b), or 6(c). Regarding the incarceration decision, only 17 districts (less than a quarter) experienced change in the magnitude of their coefficients over time: eight were toward convergence and nine toward divergence. Regarding the length-of-term decision, only ten districts experienced change in the magnitude of their coefficients over time, only one of which actually converged as predicted. Finally, regarding the judicial downward departure decision, a large number of districts actually diverged in the magnitude of their coefficients over time, contrary to the directional change in the predicted outcome.

Finally, the fiscal year of sentencing was found to exert a significant influence on all three sentencing outcomes. Owing to the substantial number of fiscal years included in this study, the fiscal year of sentencing took on an especially important role in determining whether the year in which the defendant was sentenced exhibited a significant influence on the sentencing outcome. For all three sentencing decisions, the coefficients produced by the fiscal year variable were significant, and they experienced significant changes in direction over time (see Table 8.5). Thus, the year in which the defendant was sentenced determined, in part, whether the probability of being imprisoned, of receiving a longer prison sentence, or of receiving a judicial downward departure was increased or decreased in comparison to other years.

The findings concerning the influence of year of sentencing on the three sentencing outcomes included in this study provide only partial support for the predictions in hypotheses 7(a), 7(b), and 7(c). Regarding the decision of whether to incarcerate, the coefficients were headed in the direction of convergence in the beginning

and middle years of the study period, but they began to diverge in the opposite direction during the final two fiscal years. The coefficients derived for the influence of sentencing year on the length-of-term decision fluctuated in magnitude so substantially from year to year that no real trend was discernable. However, similar to the coefficients for the incarceration decision, these coefficients began to diverge quite sharply in the final two years. Finally, the coefficients for the judicial downward departure decision showed a stable linear trend in the direction of convergence for the first half of the study. However, in the latter half of the study, the magnitude of the coefficients pointed in the direction of divergence until the final two fiscal years when they began to converge once again.

Limitations of Research

This study is limited in two general aspects. First, the study is limited by the data and by what types of data are contained in the data sets. Second, the study is limited by the type of analysis chosen to describe and define the outcomes of interest to the study. Therefore, any conclusions based on the results of this data analysis should be viewed within the context of the analytical and contextual assumptions surrounding the predicted outcomes and the weight of research limitations that influence both the interpretation and generalizability of the study findings.

The data for this study were collected by the U.S. Sentencing Commission as part of their mandate to monitor and amend the Sentencing Guidelines. Hence, those who study the data are reliant on the Commission for both the quality and quantity of the data contained in their official data sets. In turn, the Commission must rely on the probation

officers that prepare the presentence reports and on the courts to forward relevant sentencing documents to their office. Meanwhile, the researcher is removed from both the data collection process and the decision-making processes that decided what data to collect, how to code it, and which portions of it would be released into the public domain.

The data collected by the Commission only contains information on convicted offenders, i.e. those who pleaded guilty or were convicted in a trial. It does not contain any information on offenders who were filtered out of the system at an earlier stage in the criminal justice process, defendants who are acquitted or whose cases were declined for prosecution, or offenders prosecuted in state and local court systems. In general, sentencing data has been shown to reflect enforcement and prosecutorial policies more than actual crime rates (Tonry, 1997). Federal sentencing data is likewise influenced by targeted enforcement efforts of federal law enforcement agencies as well as the declination policies that dictate which types of cases merit the prosecutorial efforts of attorneys from the Department of Justice.

Regarding the issue of methodology, a true experiment is characterized by the presence of a control group, against which the effects of the stimulus on the experimental group can be measured. The current study lacked a control group or other matched group for comparison purposes. Certainly some researchers, those who have studied sentencing guidelines at the county or state level in particular, have attempted to compensate for this requirement by comparing the sentencing outcomes of groups of offenders before and after the implementation of sentencing guidelines. At the federal level, the indeterminate sentencing system was so different from the system established under the sentencing guidelines, and no comparable agency such as the Commission existed to gather

sentencing data from all 94 districts, it was determined that no control group was available for the purposes of the present research.

This study was not a true longitudinal study. A longitudinal study is characterized by testing the same group(s) repeatedly, throughout the entire study period. In other words, the same subjects are analyzed over and over again over a period of time, usually years. However, the subjects in this study were sentenced only once. Thus, each subset of fiscal year data was composed of a different group of convicted offenders than the previous year. It is the characteristics of the federal court system itself that dictates when a case is completed during the course of a year, it is then reported to the Commission, and the defendant in that case, in all likelihood, will not ever appear in that courtroom again. In this context, the researcher is left with no choice but to analyze different subjects each year if they desire to engage in a longitudinal study of this particular phenomenon.

Large studies, by their nature, also contain limitations. In these types of studies, researchers are less able to explore the reasoning process underlying individual sentencing decisions (Sisk et al., 1998). Instead, researchers typically measure general outcomes in broadly defined types of cases, leaving the process of judicial analysis in the individual case unexamined. When examining data at an aggregate level, it is possible to overlook influences that might have overlapped or even been submerged. Such differences would only be uncovered by performing a detailed analysis of individual cases and poring over the reasons for the judicial decision written by the judges themselves. Hence, this type of analysis can result in problems of generalizing from the aggregate population and applying it to the individual convicted offender. Other researchers (Daly, 1994; Semisch, 2000) have performed this type of narrative analysis

with small subsets of data. However, both the size of the data set as well as access to individual case files hindered the opportunity for such an analysis in the current study.

The models that were developed to test the predictions in this study performed exceedingly well in predicting possible outcomes and in explaining the majority of the variance surrounding each outcome of interest. At the same time, it must be acknowledged that a small portion of unexplained variance persisted in each of the models. This remnant of unexplained variance indicates an inability to explain the total amount of variance in the models. A large amount of unexplained variance indicates the potential for model misspecification. While unexplained variance is not uncommon in occurrence, it should be recognized that the models are incomplete in so far as they allow for the possibility of some important variables being omitted. The current study developed and tested numerous models to maximize the explanatory capabilities of each model. Nevertheless, a small amount of unexplained variance continues to exist.

One reason for this unexplained variance might be accounted for by the variation in sentencing practices between judges. As discussed earlier, individual-level characteristics of federal judges are not collected or disseminated in the Commission's data sets. This stark omission in information regarding the influence of characteristics of the judge such as gender, race, marital and family status, military background, religious affiliation, political affiliation, previous career experience as a prosecution or defense attorney, time on the bench, and judicial socialization made it impossible to include this information in the models for this analysis.

Another possible reason for the unexplained variance in the models might be accounted for by the variation in the surrounding social environment in each judicial

district. The data sets did not contain information on the caseloads and courtroom resources of the judicial districts, or whether they were sufficiently staffed. They did not provide information on the degree of urbanicity or the percentage of minorities in the surrounding population. Nor was there any information regarding surrounding crime rates at the city, county, or state level. Due to the lack of comprehensive information that could be applied equally to all judicial districts at the federal level, information regarding the surrounding social environment was omitted from the models.[5]

Notwithstanding these limitations to the present study, the models that were constructed were found to be overall robust and performed exceedingly well when examining the influences that were significant contributing factors to the sentencing outcome. These findings have illuminated the issue of whether disparities in sentencing outcomes arising out of gender, race, and ethnic differences among defendants has changed over time using over a decade of sentencing data. It has also focused on the residual discretion exercised by federal judges in determining appropriate sanctions, providing a fertile ground for further research exploration.

Policy Implications

Since the U.S. Supreme Court ruled in 2005 in *United States v. Booker* and *United States v. Fanfan* that the Sentencing Guidelines are no longer presumptive, but merely "advisory" for federal judges to use in determining appropriate sanctions, it might give one the impression that the findings of this study are not relevant to the current policy debate. However, while these rulings dealt a serious blow to the dominating force once exercised by the Guidelines, they certainly are not extinct. Nor has determinate

sentencing been abolished in the federal court system. In fact, by re-writing certain sections of the Guidelines with regard to relevant conduct, the U.S. Sentencing Commission can extend the longevity and reestablish the preeminent role that the Guidelines once held by in the sentencing process.

Likewise, the most recent trends in official crime rates suggest that crime is again on the rise. Such a trend will inevitably be followed by an increased concern among the general public about how best to address issues of crime and criminal justice in their neighborhoods and communities. Therefore, the findings of the current study become acutely germane in deciding whether a formally structured system such as the presumptive Sentencing Guidelines used in the federal court system provides the most appropriate response to the problem of crime and criminality. Hence, the policy discussion takes a two-pronged approach. The first prong assesses the efficacy of the presumptive Sentencing Guidelines in the federal courts in particular. This leads to the second prong of the policy discussion, which forms around the larger debate of the utility of structured sentencing in general.

One of the primary purposes of the current study was to expand upon the findings of previous studies done on smaller samples or restricted in some other way such as by time and place constraints. By removing many of these limitations, the results are much more generalizable to the overall population of offenders sentenced in the federal courts. Thus, the ability to assess different sentencing outcomes for similarly-situated offenders was enhanced. The issue then becomes determining whether the Guidelines have created a fairer and more just system thus far, or, at a minimum, pointed the sentencing process in the direction its proponents have promised. The Guidelines cannot accomplish the

desired outcome if they are differentially applied, resulting in the precarious balance between warranted and unwarranted disparity becoming a lop-sided affair.

According to the rational decision-making theory presented by Gottfredson and Gottfredson (1994), a rational case processing system must have a clear, consistent aim. Sentencing reform at the federal level was predicated on the goal of equity, but disagreement concerning the substantive merit of equal application of the law in this area continues to spark debate. Indeed, equity in sentencing is not considered within the realm of possibility for those who view unequal status and access to opportunities as obstacles inherent within the existing social structure (Chesney-Lind, 1997; Simpson, 1989). As noted by Kempf-Leonard and Sample (2001, p. 136), the "Guidelines may suffer a problem experienced with other such policy tools, that standardized instruments can institutionalize reliance upon inappropriate criteria and thereby equate cases based on statutory classifications that are substantively quite different." The findings of the current study suggest that the Guidelines have not achieved greater equity by reducing unwarranted disparities in sentencing when comparing outcomes in fiscal year 1993 to fiscal year 2003.

This begs the question then, what do we want the federal sentencing Guidelines to accomplish? And, more specifically, can the Guidelines meet the needs of the federal courts in achieving equity in processing? Thus far, no cause and effect relationship has been shown to exist between structured sentencing and crime rates (Tonry, 1995). Neither has any direct relationship been established with general deterrence. Instead, the focus of the Guideline's approach appear to be more about incapacitating the offender by means of incarceration in a federal prison based on calculations of offense severity and

criminal history scores. If the aim of the Guidelines is to rationalize the sentencing process, this can be accomplished much more effectively through the use of policy that is dynamic and that works cooperatively with judicial discretion.

Structured sentencing, in general, has demonstrated that the need exists for a certain amount of constraint to anchor the sentencing process. Just as the higher courts review the decisions of lower courts to determine whether their rulings are aligned with the Constitution, structured sentencing can provide markers to guide decision makers toward the end goal of equitable sentencing while allowing for the use of discretion. The underlying concept of sentencing guidelines is that they provide guidance without usurping the authority to make the final sentencing decision. A rigid, inflexible system is no better than an indeterminate system with almost no guidance whatsoever. In summary, structured sentencing that takes into account the need for balancing discretion with guidance that is malleable can achieve equitable and just outcomes.

Future Research Directions

There are a number of paths for future research studies to take in the area of sentencing within the federal court system. Indeed, research surrounding the use of the federal sentencing guidelines should be considered anything but complete. While the current study provides a broader view of sentencing over time than has heretofore been presented, many questions remain about the feasibility of sentencing guidelines. In fact, the most recent Commission data sets have hardly begun to be culled and analyzed yet by the research community. Hence, a brief discussion of potential research veins is outlined

in the following paragraphs in order to stimulate further research and prioritize such endeavors while being removed from any political agendas or budget constraints.

First, there are a number of ways to continue building upon the foundation established by the current study. This study used fiscal years to track changes in sentencing over time because the Guidelines are normally amended on an annual basis. A new Guidelines Manual is published by the Commission each year. For the most part, changes in sentencing practice occur on an annual basis, although emergency amendments have been added at irregular intervals. Hence, the time frame for this study was not chosen arbitrarily. However, this assumption about the data does not guarantee that sentencing trends necessarily stopped or started within this time period. One way to gather more in-depth data on changes over time would be to reduce the time between measurements to quarters. This smaller time frame might capture more diversity, if such changes were occurring more rapidly than on an annual basis.

Another way to build on the current study would be to conduct a more detailed analysis of the effects of geographic court location on the sentencing outcome. This study found that such differences exist, but did not determine whether the location of sentencing was more or less significant across the different types of outcomes. Thus, future studies should compare the importance of geographic location of the sentencing court across outcomes. There is a large amount of research that can be conducted to determine to a more exact extent the effects that each individual district court exercises over the sentencing process.

Likewise, a more detailed study of the influence of each particular type of crime would be beneficial. This study reduced the type of offense for which the defendant was

sentenced to six major categories in order to reduce the degrees of freedom in the model and to make the model as parsimonious as possible. Future studies can delineate exactly which types of offenses exercise the most influence over which types of sentencing outcomes.

The current study should also stimulate interest in the use of more advanced modeling techniques to affirm these findings. For example, hierarchical modeling can permit the researcher to test for nesting effects in the model. Future research can also explore more interaction effects between all of the independent variables rather than focus exclusively on the interaction between gender and race and ethnicity. There are many other interactions to explore, such as between citizenship, age, education, and the number of counts of conviction. One can also delve further into the significant effect of family status and the presence of dependent children on the sentencing outcome since this variable exerted significant influence on all three decision-making points in this study.

The second direction that future research can take is to explore aspects of sentencing under the federal sentencing guidelines that were completely excluded from this study. This study focuses only on whether or not the defendant received a sentence of incarceration, but there is a great deal that can be learned from the study of defendants who were sentenced to intermediate sanctions such as community confinement, home detention, and other types of intermittent confinement. It is just as important to understand the characteristics that influence whether a defendant is sentence to prison as to understand which characteristics influence whether a defendant receives an intermediate sentence of confinement, or even probation rather than prison. In this data set, 25,622 (five percent) of the defendants, who were located in Zones C or D, who

received zero months in prison. In other words, they received sentences involving intermediate sanctions and/or downward departures so that they did not go to prison. This group of defendants certainly merits further study.

The lines between race and ethnicity are not always clear. Other researchers have made a point of separating out the effects by white Hispanics and black Hispanics (Mustard, 2001; Chanhatasilpa, 2000). In his study, Mustard (2001) found that black Hispanics differed from white Hispanics and other Hispanics in that they had higher offense levels, were less likely to be U.S. citizens, had smaller annual incomes, and received longer average prison terms. In this study, the majority (95.5 percent) of Hispanics were identified in the white racial category. Another 4.1 percent of the study group was identified as black Hispanics, and 0.4 percent was identified as other Hispanics. Based on the differences suggested in other studies, future analyses should take into account the potential for differences in sentencing outcomes arising out of the distinct racial categories within the Hispanic ethnicity category.

There is also a great deal of research that can be done to better understand the departure decision when sentences do not fall within the range prescribed by the sentencing guidelines. This study focused solely on the judicial downward departure decision, but it is no less important to understand the factors that influence the decision to grant a substantial assistance departure or an upward departure. As Mustard (2001) emphasized in his research, it is as important to study the magnitude of the departure as it is to study its occurrence (see also Steffensmeier and DeMuth, 2000; Griswold, 1987; Kramer and Ulmer, 1996 for emphasis on analyzing the size of the departure). Moreover, it would be very interesting to follow those defendants who received departures and see

whether their future recidivism rates are different than those offenders who did not receive departures and were sentencing within the guideline's range.

Finally, this research excluded some variables because they were not available during much of the time period covered in this study. However, future research should focus on uncovering the amount of influence that these excluded variables have in the sentencing process. Studies that utilize more recent data sets can examine the impact of such variables as marital status and type of defense counsel that were not analyzed in this study. Uncovering the effects of these variables can increase a model's ability to decipher the various influences involved in the sentencing decision.

Conclusion

The findings from this study should emphasize the importance of conducting research on the outcomes of defendants sentenced under the Guidelines that is not limited to one offense type, or to a few judicial circuits, or to just a few years of data. They have also demonstrated how federal district court judges continue to exercise a substantial amount of discretion in deciding whether to incarcerate, what the length of incarceration should be, and whether to grant a judicial downward departure. Indeed, the variation in sentencing attributable to judges in the federal courts is still considerable (LaCasse & Payne, 1999). Hence, these findings raise the question of whether the Commission's success in limiting judicial discretion by means of structured sentencing have resulted in higher rates of incarceration for women and minorities, or, whether it was the federal judges that, through their staunch adherence to the Guidelines, have pointed out the injustices created by them? Overall, sentencing under the Guidelines is a very complex

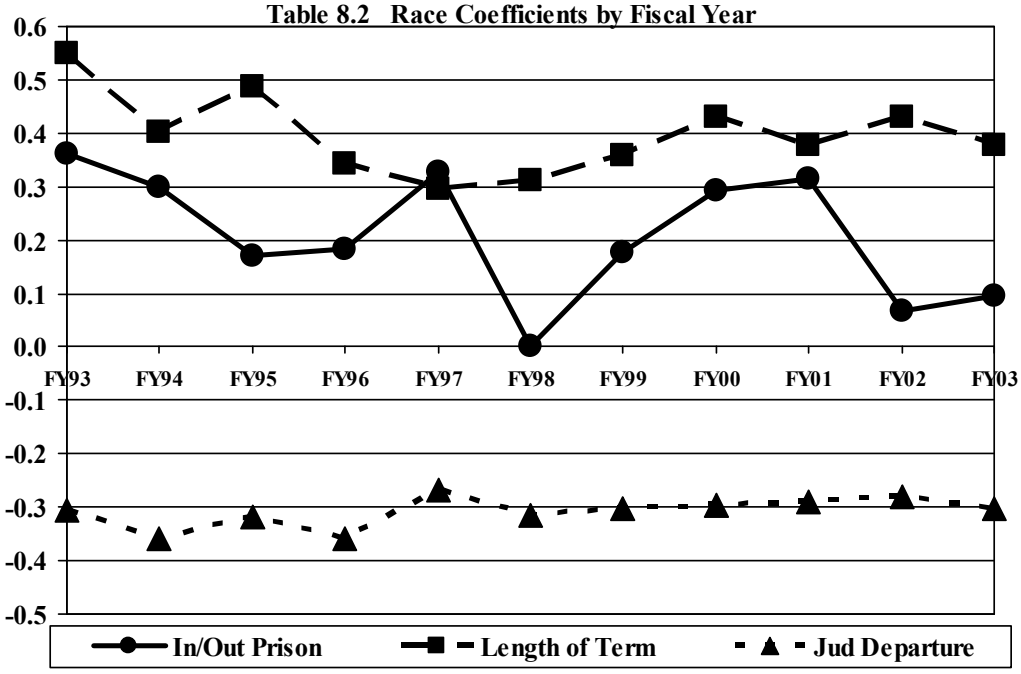
process, combined with the involvement of various courtroom actors, each of whom represents different groups with different agendas who are aiming for different outcomes. While this study focuses on judicial decision-making behavior, research on all other relevant courtroom actors will provide a more comprehensive understanding of the outcomes we are trying to predict.

If the measure of success for the SRA in general, and the Sentencing Guidelines in particular, has been to achieve uniformity in sentencing outcomes based on the characteristics of the offense rather than on the characteristics of the offender, this goal has not been achieved by fiscal year 2003, the final year of this study, although some strides have been made in certain areas. Of the three sentencing outcomes analyzed in this study, the judicial downward departure outcome has experienced the most change over time. In the end, federal judges are more comfortable departing away from the prescribed guidelines ranges, indicating that at least some of the persistent disparity in sentences may be both necessary and warranted.

TABLE 8.1. Summary of Findings of "Support" or "No Support" from Testing of Hypotheses

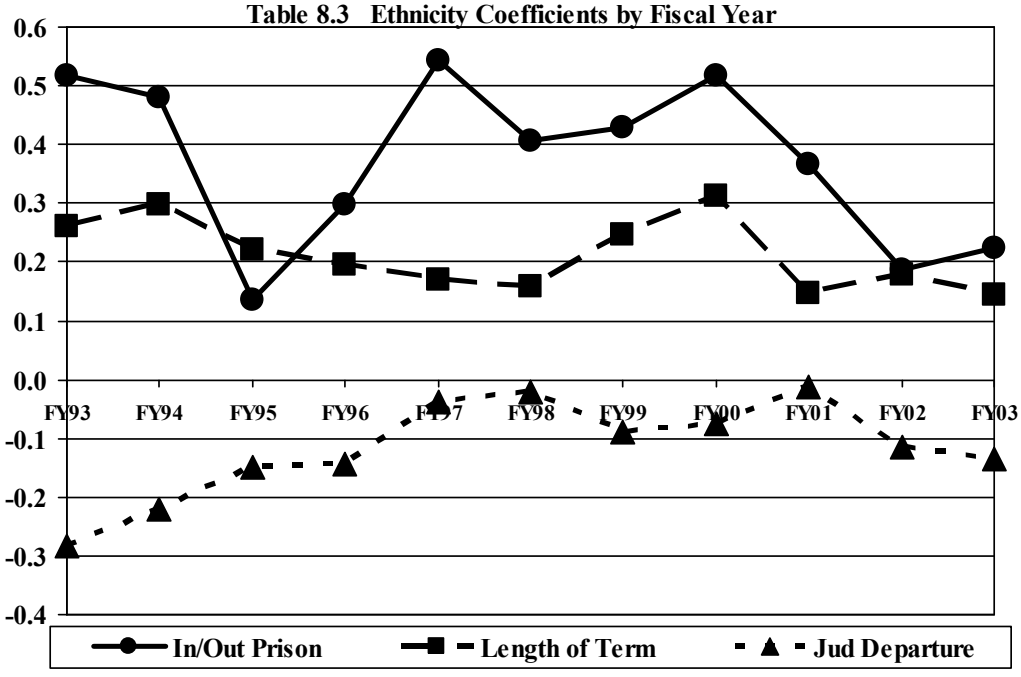
Predictions of the Study	FY1993 – 2003 Overall Support	Support for Change Over Time (11 Yrs)
1. The influence of extra-legal factors on the Imprisonment (In/Out) Decision		
A. Racial & Ethnic Disparity	YES	YES
B. Gender Disparity	YES	YES
2. The influence of extra-legal factors on the Length-of-Term Decision		
A. Racial & Ethnic Disparity	YES	Y (blk) / N (Hsp)
B. Gender Disparity	YES	YES
3. The influence of extra-legal factors on the Judicial Downward Departure Decision		
A. Racial & Ethnic Disparity	YES	NO
B. Gender Disparity	YES	NO
4. The Type of Disposition (Plea vs. Trial Conviction) will influence the sentencing outcome.		
A. Pleading guilty will influence the In/Out Decision	YES	NO
B. Pleading guilty will influence the Length-of-Term Decision	YES	NO
C. Pleading guilty will influence the Judicial Downward Departure Decision	YES	YES
5. The Offense Type (6 categories) will influence the sentencing outcome.		
A. The Offense Type category will influence the In/Out Decision	YES	NO (5)
B. The Offense Type category will influence the Length-of-Term Decision	YES	YES (4) / NO (1)
C. The Offense Type category will influence the Judicial Downward Departure Decision	YES	YES (1) / NO (4)
6. The District Court will influence the sentencing outcome.		
A. The District Court Location will influence the In/Out Decision	YES	NO
B. The District Court Location will influence the Length-of-Term Decision	YES	NO
C. The District Court Location will influence the Jud. Downward Departure Decision	YES	YES
7. The Fiscal Year of Sentencing will influence the sentencing outcome.		
A. The Fiscal Year of Sentencing will influence the In/Out Decision	YES	YES
B. The Fiscal Year of Sentencing will influence the Length-of-Term Decision	YES (5)	YES
C. The Fiscal Year of Sentencing will influence the Jud. Downward Departure Decision	YES	YES

Table 8.2 Race Coefficients by Fiscal Year



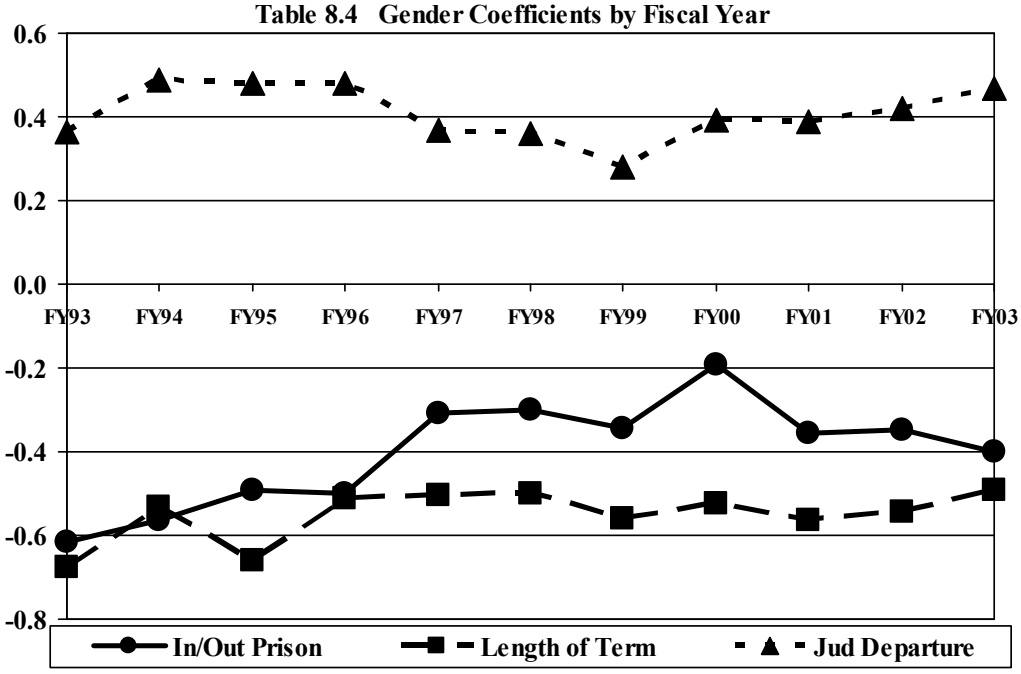
* NOTE: The coefficients for sentence length were reduced by a factor of 10 to fit within the same scale as the other two coefficients.

Table 8.3 Ethnicity Coefficients by Fiscal Year



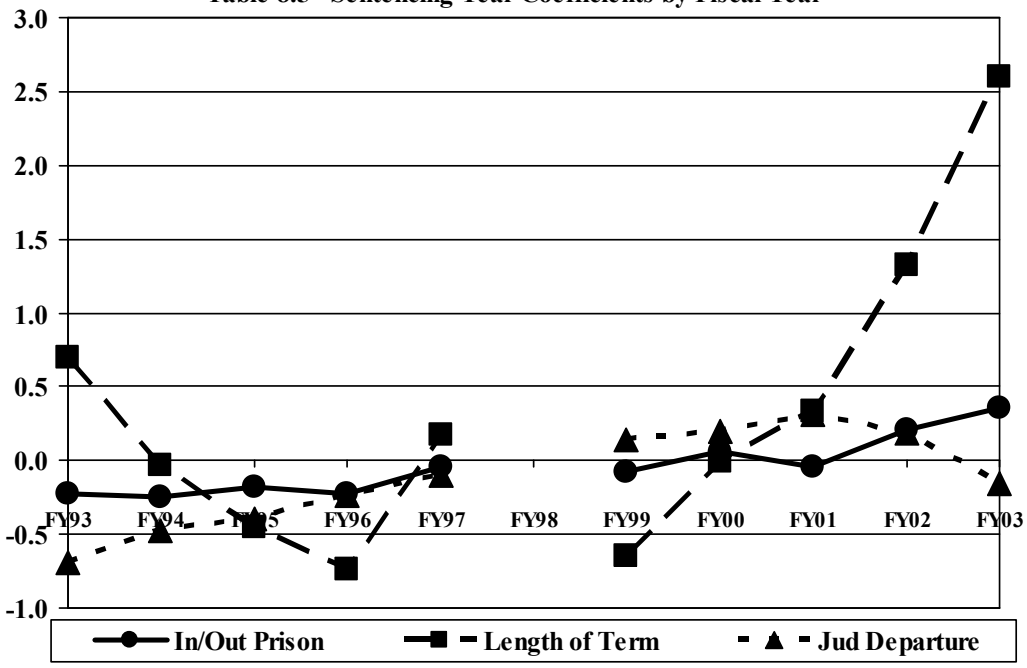
* NOTE: The coefficients for sentence length were reduced by a factor of 10 to fit within the same scale as the other two coefficients.

Table 8.4 Gender Coefficients by Fiscal Year



* NOTE: The coefficients for sentence length were reduced by a factor of 10 to fit within the same scale as the other two coefficients.

Table 8.5 Sentencing Year Coefficients by Fiscal Year



* NOTE: Fiscal year 1998 was the reference category.

NOTES

1. When the individual fiscal year data sets were combined and cleaned, 77 cases were discovered with the same identifying file number as contained in the previous fiscal year's data set. After examining the data, it was concluded that these are the same cases, with each file containing separate court documents, but received by the Commission at different times. It is unknown whether the Commission is aware of this overlap in their data sets, given that they keep each fiscal year separately. Thus, the current study will treat these duplicate cases as distinct in order to be in line with official Commission publications. The numbers of duplicate cases are: four in FY 1994, nine in FY 1996, two in FY 1997, two in FY 1998, 14 in FY 1999, eight in FY 2000, nine in FY 2001, 13 in FY 2002, and 16 in FY 2003.

2. The Federal Judicial District Courts are commonly abbreviated in two or three letters. The first two characters identify the state using the state's postal abbreviation. If there is more than one district court within a state, a third character is used to describe it. These letters are C = Central, E = East, M = Middle, N = North, S = South, or W = West.

3. Recent studies analyzing departures from the Guidelines have excluded cases in Zone A of the sentencing table, reasoning that the penalty ranges already allow for zero months of incarceration without the need for a departure. Whether the cases in Zone A actually received a judicial downward departure, or if they are instead the result of reporting, coding, or data entry errors is unknown. As a precaution, a supplemental multinomial regression procedure, which excluded cases that were located in Zone A, was performed to check the estimates for the judicial downward departure outcome. The multinomial logistic regression for judicial downward departures for defendants located in Zones B, C, and D did not result in radically different estimates, lending credence to the robustness of the findings of the original regression that included all four zones.

4. Allison (1999) has pointed out that comparisons of logit coefficients across groups are potentially confounded by differences in residual variation. In essence, the difference in two coefficients may be an artifact of differences in the unobserved heterogeneity in the models. These differences in residual variation can then lead to invalid conclusions. As a solution, he suggests a test for interactions between particular predictors and dummy (indicator) variables representing the groups. Allison's heteroskedastic logit model, with a single dichotomous variable in the variance equation, is a special case of the larger class of models that are variously known as location scale models and heterogeneous choice models. Allison's paper was written in 1999. The specialized routines that Allison wrote are no longer necessary because modern statistical software packages include routines for estimating heterogeneous choice models. According to Williams (2006), Allison has provided a valuable service by alerting researchers to an important problem that has gone unnoticed by many. However, thanks, in part, to additional research that Allison's paper has inspired, we now know that his original proposed solution can sometimes have serious problems, and, counter to his advice, should not be applied on a routine basis. The best solution in this study was to estimate models both with and without controls for

heteroskedasticity, and consider whether model mis-specification could be the cause of any seemingly-major differences in conclusions (see also Hoetker, 2003).

5. A part of the unexplained variance in the models may be attributable to historical and political events that might have affected the hypothesized convergence. For example, a Democratic administration was in the White House from 1992 to 2000, so federal judicial nominations and Supreme Court nominations originated from the Democratic Party. However, after the 2000 elections, a Republican administration was in the White House. There have also been important swings in the majority party of the U.S. Congress. At the same time, pertinent case law such as Koon v. United States (1996) has continued to accumulate. Important changes such as these might well have influenced Commission priorities and impacted sentencing outcomes in a myriad number of ways. These are just some of the contextual factors, in addition to district-specific or circuit-specific traditions and legal cultures, which may affect the discretion exercised by the courtroom actors in a federal judicial court.

APPENDIX A

SENTENCING TABLE

(in months of imprisonment)

	Offense Level	Criminal History Category (Criminal History Points) I (0 or 1)	II (2 or 3)	III (4,5,6)	IV (7,8,9)	V (10,11,12)	VI (13 or more)
	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
Zone A	5	0-6	0-6	1-7	4-10	6-12	9-15
Zone A	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	0-6	2-8	4-10	8-14	12-18	15-21
	8	0-6	4-10	6-12	10-16	15-21	18-24
Zone B	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
Zone C	11	8-14	10-16	12-18	18-24	24-30	27-33
Zone C	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24	21-27	27-33	33-41	37-46
	15	18-24	21-27	24-30	30-37	37-46	41-51
	16	21-27	24-30	27-33	33-41	41-51	46-57
	17	24-30	27-33	30-37	37-46	46-57	51-63
	18	27-33	30-37	33-41	41-51	51-63	57-71
	19	30-37	33-41	37-46	46-57	57-71	63-78
	20	33-41	37-46	41-51	51-63	63-78	70-87
	21	37-46	41-51	46-57	57-71	70-87	77-96
	22	41-51	46-57	51-63	63-78	77-96	84-105
	23	46-57	51-63	57-71	70-87	84-105	92-115
	24	51-63	57-71	63-78	77-96	92-115	100-125
	25	57-71	63-78	70-87	84-105	100-125	110-137
Zone D	26	63-78	70-87	78-97	92-115	110-137	120-150
Zone D	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	≥43	life	life	Life	life	Life	life

SOURCE: Inside back cover of the U.S. Sentencing Commission's Guidelines Manual (November, 2001).

The Federal Courts
U.S. Courts of Appeals and U.S. District Courts

Court of Appeals	District Courts	Authorized Judgeships	Location
Federal Court	United States	12	Washington, D.C.
District of Columbia Circuit	District of Columbia	12	Washington, D.C.
First Circuit	Maine Massachusetts New Hampshire Rhode Island Puerto Rico	6	Boston, MA
Second Circuit	Connecticut New York (4) Vermont	13	New York, NY
Third Circuit	Delaware New Jersey Pennsylvania (3) Virgin Islands	14	Philadelphia, PA
Fourth Circuit	Maryland North Carolina (3) South Carolina Virginia (2) West Virginia (2)	15	Richmond, VA
Fifth Circuit	Louisiana (3) Mississippi (2) Texas (4)	17	New Orleans, LA
Sixth Circuit	Kentucky (2) Michigan (2) Ohio (2) Tennessee (3)	16	Cincinnati, OH
Seventh Circuit	Illinois (3) Indiana (2) Wisconsin (2)	11	Chicago, IL

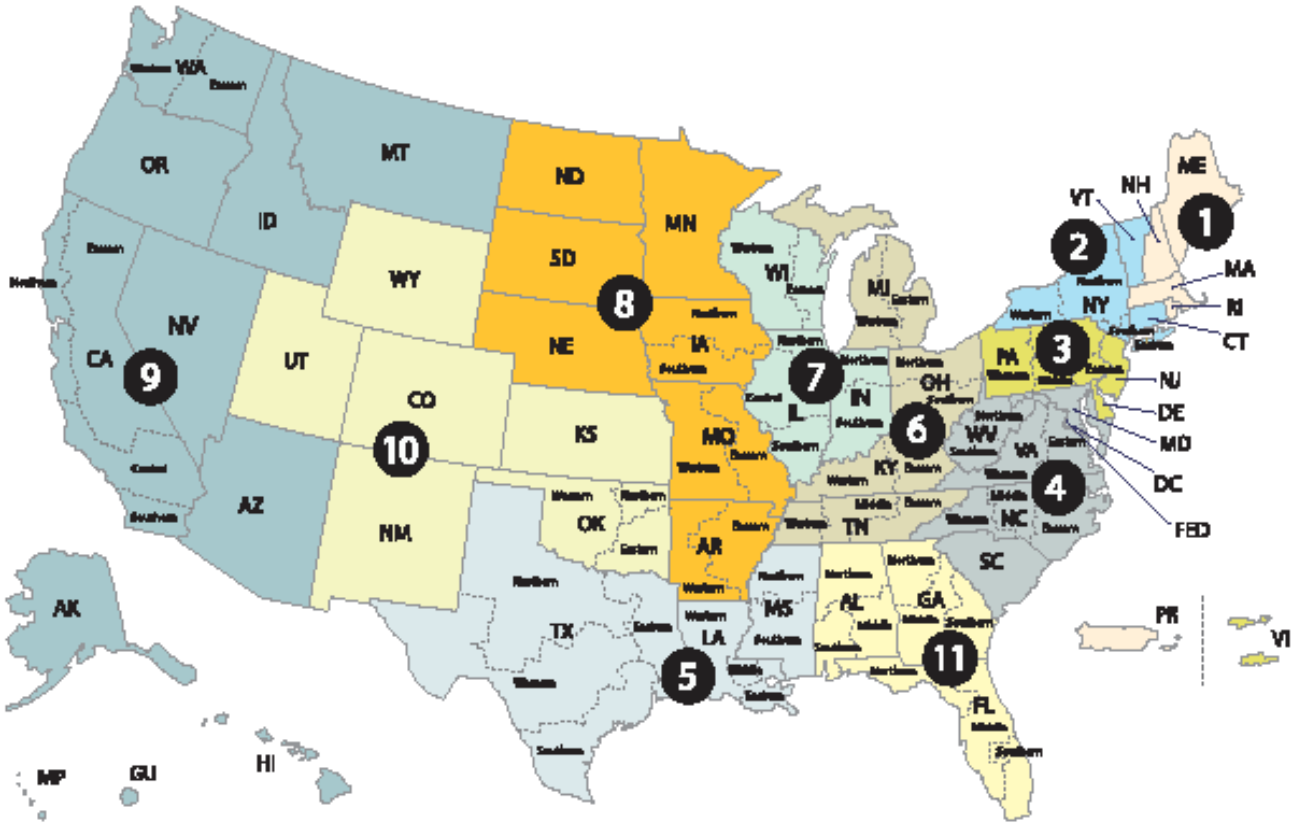
The Federal Courts
U.S. Courts of Appeals and U.S. District Courts
(continued)

Court of Appeals	District Courts	Authorized Judgeships	Location
Eighth Circuit	Arkansas (2) Iowa (2) Minnesota Missouri (2) Nebraska North Dakota South Dakota	11	St. Louis, MO
Ninth Circuit	Alaska Arizona California (4) Hawaii Idaho Montana Nevada Oregon Washington (2) Guam N. Mariana Islands	28	San Francisco, CA
Tenth Circuit	Colorado Kansas New Mexico Oklahoma (3) Utah Wyoming	12	Denver, CO
Eleventh Circuit	Alabama (3) Florida (3) Georgia (3)	12	Atlanta, GA

SOURCE: Administrative Office of the U.S. Courts, January 2006.

Geographic Boundaries

of United States Courts of Appeals and United States District Courts



APPENDIX B

Table 1. District Court Coefficients Derived from the Full Logistic Regression Model for In/Out Decision

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)/ Z
Maine[1]	-	-	-	-	-	-
Massachusetts	-1.606**	.201	-2.172**	.114	-2.253**	.105
	(.149)		(.543)		(.473)	.113
New Hampshire	-1.106**	.331	-1.476*	.229	-1.922**	.146
	(.195)		(.607)		(.510)	.563
Puerto Rico	-1.508**	.221	-1.357**	.257	-1.800**	.165
	(.135)		(.440)		(.449)	.705
Rhode Island	-.197	.821	-.146	.865	-1.175	.309
	(.243)		(.738)		(.827)	.929
Connecticut	-1.794**	.166	-1.571**	.208	-3.115**	.044
	(.174)		(.504)		(.540)	2.089*
New York East	-1.479**	.228	-1.601**	.202	-1.387**	.250
	(.125)		(.415)		(.386)	-.377
New York North	-.883**	.413	-1.320**	.267	-.984*	.374
	(.130)		(.446)		(.430)	-.541
New York South	-1.979**	.138	-2.140**	.118	-1.987**	.137
	(.119)		(.395)		(.375)	-.282
New York West	-1.760**	.172	-2.223**	.108	-2.169**	.114
	(.137)		(.443)		(.448)	-.086
Vermont	-1.410**	.244	-3.295**	.037	-1.467*	.231
	(.201)		(1.125)		(.682)	-1.389
Delaware	-1.714**	.180	-.055	.946	-3.320**	.036
	(.197)		(.691)		(.665)	3.404*
New Jersey	-1.924**	.146	-1.793**	.167	-2.494**	.083
	(.129)		(.411)		(.405)	1.216
Pennsylvania East	-1.561**	.210	-1.987**	.137	-1.730**	.177
	(.131)		(.421)		(.415)	-.435
Pennsylvania Middle	-.740**	.477	-1.195*	.303	-.967*	.380
	(.140)		(.506)		(.475)	-.328
Pennsylvania West	-1.528**	.217	-1.786**	.168	-2.096**	.123
	(.148)		(.464)		(.483)	.464
Virgin Islands	-.195	.823	.039	1.039	.012	1.012
	(.151)		(.435)		(.571)	.037
Maryland	-1.738**	.176	-2.299**	.100	-.795	.452
	(.161)		(.476)		(.487)	-2.207*
No. Carolina East	-1.726**	.178	-2.089**	.124	-2.142**	.117
	(.141)		(.506)		(.469)	.076
No. Carolina Middle	-1.128**	.324	-1.521**	.219	-.464	.629
	(.154)		(.526)		(.580)	-1.351
No. Carolina West	-1.239**	.290	-2.155**	.116	-1.456**	.233
	(.140)		(.473)		(.478)	-1.039

Table 1. District Court Coefficients Derived from the Full Logistic Regression Model for In/Out Decision (continued)

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)/ Z
South Carolina	-1.513**	.220	-1.723**	.178	-1.766**	.171
	(.121)		(.391)		(.381)	.078
Virginia East	-.821**	.440	-1.163**	.313	-1.078**	.340
	(.117)		(.388)		(.364)	-.159
Virginia West	-1.010**	.364	-1.440**	.237	-1.631**	.196
	(.142)		(.498)		(.435)	.290
West Virginia North	-.717**	.488	-.047	.954	-.967	.380
	(.183)		(.540)		(.637)	1.101
West Virginia South	-1.022**	.360	-1.001*	.367	-.260	.771
	(.155)		(.444)		(.477)	-1.138
Louisiana East	-1.434**	.238	-.933*	.393	-2.142**	.117
	(.135)		(.407)		(.451)	1.991*
Louisiana Middle	-1.004**	.366	-.286	.751	-1.644**	.193
	(.170)		(.684)		(.495)	1.609
Louisiana West	-.742**	.476	-.331	.718	-.860*	.423
	(.135)		(.428)		(.419)	.884
Mississippi North	-.903**	.405	-.992	.371	-2.158**	.116
	(.167)		(.518)		(.616)	1.449
Mississippi South	-.934**	.393	-.935*	.393	-.608	.544
	(.145)		(.472)		(.419)	-.518
Texas East	-.998**	.369	-1.436**	.238	-.638	.528
	(.139)		(.441)		(.437)	-1.285
Texas North	-.742**	.476	-.894*	.409	-.633	.531
	(.120)		(.397)		(.381)	-.475
Texas South	-.847**	.429	-1.141**	.319	-.540	.583
	(.115)		(.387)		(.367)	-1.129
Texas West	-1.708**	.181	-.471	.624	-1.531**	.216
	(.114)		(.397)		(.361)	1.976*
Kentucky East	-.552**	.576	-1.054*	.349	-.930*	.395
	(.130)		(.436)		(.436)	-.201
Kentucky West	-2.032**	.131	-2.043**	.130	-2.608**	.074
	(.132)		(.426)		(.419)	.945
Michigan East	-.796**	.451	-.900*	.407	-1.595**	.203
	(.122)		(.394)		(.412)	1.218
Michigan West	-.276*	.759	-.190	.827	-.180	.835
	(.138)		(.456)		(.458)	-.015
Ohio North	-.870**	.419	-2.661**	.070	-.880*	.415
	(.119)		(.435)		(.375)	-3.098*
Ohio South	-1.071**	.343	-.856*	.425	-1.646**	.193
	(.131)		(.412)		(.430)	1.326

Table 1. District Court Coefficients Derived from the Full Logistic Regression Model for In/Out Decision (continued)

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)/ Z
Tennessee East	-.712**	.491	-.239	.787	-.901*	.406
	(.142)		(.431)		(.439)	1.075
Tennessee Middle	-1.011**	.364	-.663	.515	-1.506**	.222
	(.160)		(.526)		(.598)	1.058
Tennessee West	-1.285**	.277	-1.727**	.178	-1.131**	.323
	(.142)		(.446)		(.433)	-.958
Illinois Central	-.385**	.681	-.417	.659	.161	1.174
	(.157)		(.505)		(.477)	-.832
Illinois North	-1.465**	.231	-1.662**	.190	-1.317**	.268
	(.127)		(.402)		(.388)	-.617
Illinois South	-1.336**	.263	-2.752**	.064	-1.336*	.263
	(.189)		(.668)		(.563)	-1.621
Indiana North	-1.851**	.157	-2.954**	.052	-1.482**	.227
	(.167)		(.564)		(.481)	-1.986
Indiana South	-1.429**	.240	-.278	.758	-1.551*	.212
	(.191)		(.562)		(.780)	-1.324
Wisconsin East	-2.136**	.118	-3.142**	.043	-1.470**	.230
	(.178)		(.615)		(.545)	-2.034*
Wisconsin West	.952**	2.592	1.376**	3.961	-.008	1.008
	(.177)		(.509)		(.626)	1.697
Arkansas East	-.704**	.495	-.693	.500	-1.608**	.200
	(.141)		(.462)		(.460)	1.405
Arkansas West	-.878**	.416	-1.735**	.180	-.215	.807
	(.158)		(.464)		(.522)	-2.147*
Iowa North	-.567**	.567	-2.142**	.117	.271	1.312
	(.170)		(.806)		(.584)	-2.424*
Iowa South	-.983**	.374	-.463	.629	-1.570**	.208
	(.189)		(.646)		(.499)	1.356
Minnesota	-1.146**	.318	-.736	.479	-1.215**	.297
	(.153)		(.454)		(.473)	.731
Missouri East	-.821**	.440	-.587	.556	-1.016**	.362
	(.137)		(.457)		(.420)	.691
Missouri West	-1.265**	.282	-1.642**	.194	-1.223**	.294
	(.150)		(.463)		(.458)	-.643
Nebraska	-1.032**	.356	-1.056*	.348	-1.164*	.312
	(.159)		(.460)		(.508)	.158
North Dakota	-.946**	.388	-1.854**	.157	-.884	.413
	(.146)		(.492)		(.467)	-1.430
South Dakota	-.175	.839	-.067	.935	-.974*	.378
	(.132)		(.449)		(.449)	1.428

Table 1. District Court Coefficients Derived from the Full Logistic Regression Model for In/Out Decision (continued)

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)/ Z
Alaska	-1.561**	.210	-.963	.382	-1.236*	.290
	(.176)		(.534)		(.559)	.354
Arizona	-.507**	.602	-1.636**	.195	-.080	.923
	(.116)		(.397)		(.361)	-2.901*
California Central	-1.224**	.294	-.642	.526	-1.943**	.143
	(.120)		(.406)		(.370)	2.369*
California East	-1.407**	.245	-1.485**	.226	-1.527**	.217
	(.130)		(.427)		(.411)	.070
California North	-2.412**	.090	-2.557**	.078	-2.125**	.119
	(.140)		(.588)		(.429)	-.593
California South	-.456**	.634	-.835*	.434	-.428	.652
	(.122)		(.411)		(.438)	-.678
Guam	-.366*	.694	-3.236**	.039	.190	1.210
	(.153)		(.649)		(.558)	-4.001*
Hawaii	-1.153**	.316	-.596	.551	-1.425**	.240
	(.144)		(.485)		(.466)	1.223
Idaho	-.845**	.430	-.602	.548	-2.138**	.118
	(.187)		(.747)		(.584)	1.621
Montana	-1.064**	.345	-1.033*	.356	-.505	.604
	(.147)		(.462)		(.447)	-.821
Nevada	-1.459**	.232	-1.637**	.194	-1.499**	.223
	(.135)		(.425)		(.408)	-.234
No. Mariana Islands	-1.205*	.300	17.894	.000	-2.111	.121
	(.572)		(40,192.970)		(1.621)	-.000
Oregon	-1.554	.211	-1.880**	.153	-2.664**	.070
	(.157)		(.509)		(.536)	1.061
Washington East	-.686**	.504	-.543	.581	-.811	.444
	(.157)		(.488)		(.504)	.382
Washington West	-.857**	.424	-1.866**	.155	-.796*	.451
	(.130)		(.442)		(.414)	-1.767
Colorado	-1.129**	.323	-1.376**	.253	-.707	.493
	(.135)		(.437)		(.423)	-1.100
Kansas	-1.164**	.312	-.860*	.423	-2.077**	.125
	(.141)		(.447)		(.459)	1.900
New Mexico	-.523**	.593	1.402**	.246	-.779*	.459
	(.121)		(.422)		(.377)	-1.100
Oklahoma East	-2.311**	.099	.009	1.009	-3.125**	.044
	(.287)		(.852)		(.981)	2.411*
Oklahoma North	-1.394**	.248	-2.181**	.113	-1.152*	.316
	(.164)		(.579)		(.576)	-1.259

Table 1. District Court Coefficients Derived from the Full Logistic Regression Model for In/Out Decision (continued)

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)/ Z
Oklahoma West	-.492**	.611	.369	1.447	-1.109*	.330
	(.150)		(.431)		(.510)	2.214*
Utah	-1.482**	.227	-1.387**	.250	-2.217**	.109
	(.137)		(.455)		(.415)	1.348
Wyoming	-.587**	.556	-2.433**	.088	.801	2.228
	(.184)		(.639)		(.727)	-3.341*
Alabama Middle	-1.376**	.253	-1.065*	.345	-2.680**	.069
	(.160)		(.460)		(.733)	1.865
Alabama North	-1.368**	.255	-1.912**	.148	-1.124**	.325
	(.136)		(.464)		(.423)	-1.255
Alabama South	-.910**	.402	-1.388**	.250	-1.256**	.285
	(.147)		(.430)		(.471)	-.206
Florida Middle	-.865**	.421	-1.403**	.246	-1.457**	.233
	(.118)		(.402)		(.375)	.098
Florida North	-.625**	.535	-.276	.759	-1.789**	.167
	(.151)		(.479)		(.503)	2.180*
Florida South	-.971**	.379	-1.106**	.331	-1.160**	.313
	(.118)		(.395)		(.367)	.101
Georgia Middle	-1.103**	.332	-1.691**	.184	-1.309**	.270
	(.134)		(.496)		(.412)	-.592
Georgia North	-1.468**	.230	-2.095**	.123	-2.068**	.126
	(.136)		(.454)		(.469)	-.041
Georgia South	-.874**	.417	-.713	.490	-1.623**	.197
	(.148)		(.509)		(.487)	1.291
Dist. of Columbia	-1.788**	.167	-1.732**	.177	-1.923**	.146
	(.135)		(.434)		(.459)	.303
N	95,810		9,324		10,944	
Nagelkerke R^2 Value	.436		.417		.551	
Model Prediction Rate	78.3%		80.7%		80.5%	

1 = Reference Category, the District Court that was held constant in the model.
* $p < .05$ ** $p < .01$

Table 2. District Court Coefficients Derived from the Full OLS Regression Model for Mean Sentence Length

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B/ Z Test
Maine	-.451	.000	-2.238	-.002	5.000	.004
	(1.405)		(5.083)		(4.186)	-1.099
Massachusetts	-10.262**	-.013	-7.420	-.008	-5.004	-.006
	(1.193)		(4.444)		(3.493)	-.427
New Hampshire	-4.928**	-.004	3.929	.003	-6.673	-.005
	(1.481)		(5.544)		(4.161)	1.529
Puerto Rico	9.884**	.014	10.405**	.013	15.450**	.026
	(1.166)		(4.240)		(3.326)	-.936
Rhode Island[1]	-	-	-	-	-	-
	-		-		-	-
Connecticut	-6.479**	-.006	6.130	.006	-7.379*	-.008
	(1.301)		(4.721)		(3.621)	2.270*
New York East	-11.193**	-.024	-3.804	-.008	-7.076*	-.016
	(1.095)		(3.769)		(3.214)	.660
New York North	-9.620**	-.010	-.064	.000	-4.371	-.004
	(1.257)		(4.491)		(3.666)	.743
New York South	-10.184**	-.022	.735	.001	-3.923	-.009
	(1.095)		(3.846)		(3.212)	.930
New York West	-4.625**	-.005	1.249	.001	-2.179	-.002
	(1.238)		(4.497)		(3.591)	.596
Vermont	-7.737**	-.005	5.218	.004	-7.324	-.005
	(1.518)		(5.149)		(4.193)	1.889
Delaware	-3.466*	-.002	3.525	.002	-7.576	-.005
	(1.672)		(5.986)		(4.498)	1.483
New Jersey	-2.430*	-.004	2.801	.004	-2.560	-.004
	(1.147)		(4.162)		(3.351)	1.003
Pennsylvania East	-16.252**	-.028	-27.092**	-.055	-14.017**	-.023
	(1.122)		(3.793)		(3.309)	-2.598*
Pennsylvania Middle	-5.204**	-.006	3.218	.003	-3.591	-.004
	(1.236)		(4.406)		(3.636)	1.192
Pennsylvania West	-.479	-.000	-.617	-.001	5.502	.006
	(1.280)		(4.418)		(3.652)	-1.067
Virgin Islands	-.174	-.000	5.826	.005	6.196	.003
	(1.595)		(5.001)		(5.101)	-.052
Maryland	-1.486	-.002	.953	.001	1.920	.003
	(1.182)		(4.386)		(3.418)	-.174
No. Carolina East	4.887**	.007	17.552**	.023	-2.290	-.003
	(1.175)		(4.150)		(3.413)	3.693*
No. Carolina Middle	6.961**	.009	4.096	.005	10.051**	.011
	(1.200)		(4.183)		(3.551)	-1.085

Table 2. District Court Coefficients Derived from the Full OLS Regression Model for Mean Sentence Length (continued)

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B/ Z Test
No. Carolina West	-7.899**	-.012	-2.376	-.004	2.501	.004
	(1.159)		(3.994)		(3.401)	-.930
South Carolina	4.137**	.007	2.401	.004	6.478*	.011
	(1.129)		(3.914)		(3.302)	-.796
Virginia East	10.427**	.020	12.041**	.021	12.512**	.027
	(1.108)		(3.891)		(3.224)	-.093
Virginia West	-3.021**	-.004	-5.632	-.006	1.203	.002
	(1.206)		(4.386)		(3.432)	-1.227
West Virginia North	6.687**	.006	5.191	.005	5.590	.006
	(1.342)		(4.546)		(3.703)	-.068
West Virginia South	6.330**	.007	8.583*	.011	9.166**	.010
	(1.262)		(4.183)		(3.643)	-.105
Louisiana East	1.124	.001	3.058	.004	3.350	.004
	(1.206)		(4.173)		(3.493)	-.054
Louisiana Middle	.527	.000	3.389	.002	-4.064	-.002
	(1.625)		(6.065)		(4.702)	.973
Louisiana West	3.263**	.003	13.499**	.013	5.864	.006
	(1.281)		(4.614)		(3.666)	1.296
Mississippi North	-3.107*	-.002	.583	.000	-1.505	-.001
	(1.421)		(5.079)		(4.151)	.318
Mississippi South	.374	.000	6.876	.007	5.881	.007
	(1.266)		(4.392)		(3.533)	.177
Texas East	3.987**	.006	10.187**	.013	4.412	.007
	(1.157)		(4.190)		(3.370)	1.074
Texas North	4.903**	.010	13.301**	.026	8.270**	.016
	(1.103)		(3.800)		(3.256)	1.005
Texas South	.620	.002	3.816	.009	1.046	.004
	(1.061)		(3.714)		(3.128)	.571
Texas West	.104	.000	5.050	.012	1.552	.006
	(1.060)		(3.704)		(3.128)	.721
Kentucky East	-.486	-.001	4.569	.005	1.479	.002
	(1.207)		(4.369)		(3.519)	.551
Kentucky West	.565	.001	-.825	-.001	-2.816	-.003
	(1.339)		(5.060)		(3.795)	.315
Michigan East	-2.604*	-.004	5.417	.011	.050	.000
	(1.127)		(3.812)		(3.381)	1.053
Michigan West	-.080	.000	11.991**	.011	3.313	.004
	(1.235)		(4.689)		(3.479)	1.486
Ohio North	-2.194*	-.003	6.749	.010	-2.808	-.004
	(1.146)		(4.023)		(3.331)	1.830

Table 2. District Court Coefficients Derived from the Full OLS Regression Model for Mean Sentence Length (continued)

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B/ Z Test
Ohio South	-3.097**	-.004	.437	.001	-4.903	-.006
	(1.207)		(4.063)		(3.510)	.995
Tennessee East	6.270**	.008	4.513	.006	14.327**	.020
	(1.187)		(4.196)		(3.390)	-1.819
Tennessee Middle	-1.074	-.001	3.651	.003	.020	.000
	(1.338)		(4.865)		(3.760)	.590
Tennessee West	-1.132	-.001	1.132	.001	-2.695	-.003
	(1.207)		(4.166)		(3.475)	.705
Illinois Central	5.265**	.006	7.486	.008	15.289**	.018
	(1.256)		(4.447)		(3.549)	-1.371
Illinois North	-.171	.000	6.627	.009	1.324	.003
	(1.138)		(4.023)		(3.245)	.956
Illinois South	11.146**	.013	9.954*	.011	6.609	.007
	(1.225)		(4.353)		(3.595)	.592
Indiana North	-2.262	-.002	2.821	.002	-6.350	-.007
	(1.279)		(4.998)		(3.581)	1.491
Indiana South	7.612**	.007	14.312**	.014	9.157	.009
	(1.308)		(4.559)		(3.696)	.874
Wisconsin East	3.063*	.003	15.022**	.017	7.065	.007
	(1.284)		(4.322)		(3.703)	1.398
Wisconsin West	13.064**	.010	15.211**	.012	15.899**	.013
	(1.455)		(4.953)		(3.986)	-.108
Arkansas East	2.775*	.003	2.669	.002	4.365	.004
	(1.297)		(4.752)		(3.954)	-.274
Arkansas West	2.455	.002	7.532	.005	-.712	-.001
	(1.493)		(5.321)		(4.087)	1.229
Iowa North	.063	.000	-1.019	-.001	4.350	.005
	(1.290)		(5.243)		(3.488)	-.853
Iowa South	6.011**	.006	16.324**	.012	7.495	.009
	(1.263)		(5.288)		(3.524)	1.389
Minnesota	-5.039**	-.006	3.572	.004	-3.085	-.004
	(1.199)		(4.220)		(3.501)	1.214
Missouri East	.858	.001	8.926	.010	.466	.001
	(1.163)		(4.301)		(3.340)	1.554
Missouri West	-6.172**	-.008	4.885	.007	-4.256	-.006
	(1.174)		(4.108)		(3.366)	1.721
Nebraska	2.105	.003	-5.839	-.006	12.247**	.019
	(1.205)		(4.620)		(3.344)	-3.171*
North Dakota	-4.150**	-.003	2.044	.001	-2.679	-.002
	(1.510)		(5.838)		(4.156)	.659

Table 2. District Court Coefficients Derived from the Full OLS Regression Model for Mean Sentence Length (continued)

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B/ Z Test
South Dakota	2.622*	.003	7.934	.006	3.466	.003
	(1.307)		(5.040)		(3.784)	.709
Alaska	.984	.001	.651	.000	3.200	.002
	(1.530)		(6.113)		(4.351)	-.340
Arizona	-8.202**	-.023	-4.364	-.009	-4.604	-.017
	(1.072)		(3.783)		(3.137)	-.049
California Central	-2.891**	-.005	4.225	.006	-6.473*	-.013
	(1.113)		(4.023)		(3.244)	2.070
California East	-2.919**	-.004	9.289*	.013	-7.763*	-.012
	(1.178)		(4.083)		(3.337)	3.234*
California North	-7.233**	-.010	8.403	.007	-6.348	-.008
	(1.179)		(4.837)		(3.460)	2.480*
California South	-9.369**	-.025	-6.990	-.017	-7.469*	-.018
	(1.074)		(3.719)		(3.197)	.098
Guam	1.696	.001	7.239	.003	-3.277	-.002
	(1.702)		(7.458)		(5.423)	1.140
Hawaii	-6.329**	-.006	-2.384	-.002	-6.632	-.007
	(1.293)		(5.097)		(3.707)	.674
Idaho	-4.291**	-.003	12.621	.006	-2.769	-.003
	(1.510)		(6.744)		(3.804)	1.988
Montana	2.873*	.003	3.837	.003	7.733*	.008
	(1.314)		(5.160)		(3.636)	-.617
Nevada	-1.031	-.001	3.865	.005	-1.115	-.002
	(1.175)		(4.164)		(3.375)	.929
No. Mariana Islands	-12.505**	-.003	-22.123	-.004	-8.253	-.002
	(3.166)		(16.360)		(8.327)	-.756
Oregon	-3.063**	-.003	4.295	.006	-6.137	-.007
	(1.244)		(4.124)		(3.530)	1.922
Washington East	-5.011**	-.005	1.185	.001	.286	.000
	(1.298)		(4.985)		(3.565)	.147
Washington West	-8.742**	-.011	-3.476	-.004	-7.424*	-.010
	(1.188)		(4.246)		(3.447)	.722
Colorado	-4.380**	-.005	6.113	.007	-5.795	-.007
	(1.205)		(4.222)		(3.465)	2.180*
Kansas	1.557	.002	10.694*	.011	.397	.001
	(1.214)		(4.421)		(3.434)	1.839
New Mexico	-3.015**	-.006	2.053	.003	-1.362	-.003
	(1.102)		(3.977)		(3.188)	.670
Oklahoma East	6.293	.003	10.748	.005	8.279	.004
	(1.890)		(7.394)		(5.445)	.269

Table 2. District Court Coefficients Derived from the Full OLS Regression Model for Mean Sentence Length (continued)

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B	Unstand. B / (S.E.)	Stand. B/ Z Test
Oklahoma North	3.387*	.003	-1.845	-.001	9.432*	.007
	(1.439)		(5.185)		(4.135)	-1.700
Oklahoma West	1.252	.001	6.256	.007	3.607	.003
	(1.315)		(4.331)		(4.179)	.440
Utah	-.312	.000	2.813	.003	-2.942	-.005
	(1.194)		(4.522)		(3.334)	1.024
Wyoming	5.323**	.004	-2.970	-.002	6.788	.006
	(1.447)		(5.434)		(3.862)	-1.464
Alabama Middle	2.667	.002	9.992*	.009	-1.274	-.001
	(1.399)		(4.842)		(4.210)	1.756
Alabama North	-4.100**	-.005	-2.834	-.003	2.609	.003
	(1.222)		(4.605)		(3.483)	-.943
Alabama South	-5.294**	-.006	-1.586	-.002	4.824	.005
	(1.230)		(4.130)		(3.668)	-1.161
Florida Middle	2.107*	.005	9.659	.022	2.052	.004
	(1.089)		(3.736)		(3.217)	1.543
Florida North	4.504**	.006	-7.778*	-.010	7.404	.008
	(1.202)		(4.115)		(3.583)	-2.782*
Florida South	4.474**	.012	7.963*	.021	4.972	.013
	(1.073)		(3.682)		(3.810)	.615
Georgia Middle	3.678**	.004	5.036	.005	7.772	.008
	(1.259)		(4.544)		(3.655)	-.469
Georgia North	.655	.001	9.313*	.015	4.034	.006
	(1.133)		(3.938)		(3.338)	1.023
Georgia South	4.392**	.004	7.566	.008	2.595	.003
	(1.280)		(4.538)		(3.722)	.847
Dist. of Columbia	-9.364**	-.011	-1.720	-.002	-13.130**	-.015
	(1.226)		(4.238)		(3.570)	2.059*
Constant	.589	-	-13.721**	-	2.967	-
	(1.225)		(4.368)		(3.458)	
R^2 Value	.771		.772		.792	

1 = Reference Category, the District Court that was held constant in the model.
* $p < .05$ ** $p < .01$

Table 3. District Court Coefficients Derived from the Full Multinomial Logistic Regression Model for the Judicial Downward Departure Decision

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)/ Z
Maine	-1.137**	.321	.185	1.204	-1.797**	.166
	(.131)		(.398)		(.524)	3.013*
Massachusetts	.607**	1.834	1.033**	2.808	.444**	1.559
	(.058)		(.272)		(.169)	1.835
New Hampshire	-.296**	.744	.026	1.026	-.346	.707
	(.116)		(.502)		(.312)	.630
Puerto Rico	-1.034**	.355	-.418	.658	-1.570**	.208
	(.074)		(.379)		(.234)	2.588*
Rhode Island	-.439**	.645	-.524	.592	-.732*	.481
	(.109)		(.545)		(.358)	.319
Connecticut	1.385**	3.995	1.987**	7.297	1.367**	3.924
	(.059)		(.239)		(.165)	2.135*
New York East	1.189**	3.284	1.244**	3.469	1.074**	2.927
	(.047)		(.215)		(.136)	.668
New York North	.401**	1.493	.202	1.224	.202	1.224
	(.066)		(.332)		(.200)	-.001
New York South	.072	1.075	1.010**	2.745	-.458**	.632
	(.050)		(.220)		(.153)	5.480*
New York West	.000	1.000	.859**	2.361	.103	1.109
	(.067)		(.267)		(.197)	2.277*
Vermont	.795**	2.215	.851**	2.341	.353	1.423
	(.080)		(.329)		(.253)	1.202
Delaware	-.463**	.630	-.271	.763	.316	1.371
	(.133)		(.623)		(.264)	-.867
New Jersey	-.366**	.693	.108	1.114	-.306	.736
	(.061)		(.284)		(.175)	1.242
Pennsylvania East[1]	-	-	-	-	-	-
	-		-		-	-
Pennsylvania Middle	-.196**	.822	.442	1.556	-.896**	.408
	(.077)		(.305)		(.288)	3.188*
Pennsylvania West	-.142	.868	.677*	1.969	-.932**	.394
	(.076)		(.285)		(.254)	4.217*
Virgin Islands	-1.053**	.349	-1.866	.155	-.570	.565
	(.155)		(1.023)		(.419)	-1.172
Maryland	.275**	1.317	.808**	2.244	-.095	.909
	(.062)		(.273)		(.192)	2.707*
No. Carolina East	-.856**	.425	-.388	.678	-.462	.630
	(.079)		(.344)		(.202)	.185
No. Carolina Middle	-1.566**	.209	-.530	.589	-2.101**	.122
	(.109)		(.377)		(.402)	2.851*

Table 3. District Court Coefficients Derived from the Full Multinomial Logistic Regression Model for the Judicial Downward Departure Decision (cont.)

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)/ Z
No. Carolina West	-.712**	.491	-.022	.978	-1.152**	.316
	(.079)		(.316)		(.257)	2.771*
South Carolina	-1.512**	.220	-.605*	.546	-1.854**	.157
	(.081)		(.288)		(.249)	3.282*
Virginia East	-1.487**	.226	-.525	.592	-1.549**	.212
	(.072)		(.282)		(.193)	3.004*
Virginia West	-.956**	.384	.476	1.610	-1.206**	.299
	(.088)		(.297)		(.248)	4.341*
West Virginia North	-1.571**	.208	-.966	.381	-2.097**	.123
	(.137)		(.543)		(.432)	1.631
West Virginia South	-1.235**	.291	.019	1.019	-2.481**	.084
	(.103)		(.295)		(.469)	4.515*
Louisiana East	-.628**	.534	-.095	.909	-.947**	.388
	(.076)		(.306)		(.241)	2.188*
Louisiana Middle	-.753**	.471	.606	1.834	-1.488**	.226
	(.142)		(.475)		(.602)	2.733*
Louisiana West	-1.080**	.340	-.147	.863	-1.701**	.182
	(.103)		(.366)		(.361)	3.022*
Mississippi North	-.070	.933	1.082**	2.951	-.619	.539
	(.099)		(.326)		(.355)	3.525*
Mississippi South	-1.007**	.365	.206	1.228	-1.366**	.255
	(.099)		(.319)		(.285)	3.678*
Texas East	-.807**	.446	.492*	1.636	-1.186**	.305
	(.070)		(.258)		(.221)	4.939*
Texas North	-.810**	.445	-.274	.760	-1.253**	.286
	(.060)		(.262)		(.187)	3.046*
Texas South	.031	.970	-.289	.749	.329**	1.389
	(.046)		(.250)		(.131)	-2.186*
Texas West	.017	1.017	-.377	.686	-.498**	.608
	(.046)		(.250)		(.135)	.424
Kentucky East	-1.478**	.228	-.618	.539	-1.579**	.206
	(.103)		(.392)		(.332)	1.873
Kentucky West	-.923**	.397	.420	1.522	-.776**	.460
	(.090)		(.287)		(.247)	3.158*
Michigan East	-.296**	.744	.055	1.057	-.482**	.618
	(.060)		(.250)		(.192)	1.707
Michigan West	-.641**	.527	-.563	.570	-.661**	.516
	(.084)		(.432)		(.229)	.201
Ohio North	-.160**	.852	.505*	1.657	-.218	.804
	(.059)		(.245)		(.172)	2.416*

Table 3. District Court Coefficients Derived from the Full Multinomial Logistic Regression Model for the Judicial Downward Departure Decision (cont.)

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)/ Z
Ohio South	-.196**	.822	-.006	.994	-.505*	.604
	(.073)		(.306)		(.217)	1.330
Tennessee East	-1.278**	.279	-.497	.609	-1.659**	.190
	(.095)		(.354)		(.284)	2.562*
Tennessee Middle	-.666**	.514	.337	1.401	-1.102**	.332
	(.104)		(.370)		(.336)	2.881*
Tennessee West	-.754**	.471	.284	1.328	-1.265**	.282
	(.085)		(.285)		(.272)	3.938*
Illinois Central	-.767**	.464	-1.800**	.165	-1.141**	.320
	(.096)		(.737)		(.280)	-.836
Illinois North	-.392**	.676	-.582*	.559	-.797**	.451
	(.061)		(.304)		(.175)	.616
Illinois South	-1.445**	.236	-1.322**	.267	-1.219**	.296
	(.107)		(.540)		(.294)	-.168
Indiana North	-.929**	.395	-.048	.954	-1.502**	.223
	(.099)		(.355)		(.332)	2.990*
Indiana South	-.537**	.584	.324	1.383	-.597*	.551
	(.097)		(.349)		(.267)	2.095*
Wisconsin East	-.761**	.467	.002	1.002	-.683**	.505
	(.092)		(.323)		(.248)	1.681*
Wisconsin West	-1.665**	.189	-1.023	.359	-3.471**	.031
	(.173)		(.617)		(1.011)	2.067*
Arkansas East	-1.191**	.304	-.228	.796	-1.429**	.239
	(.107)		(.393)		(.363)	2.244*
Arkansas West	-1.347**	.260	-.179	.836	-1.789**	.167
	(.148)		(.412)		(.473)	2.567*
Iowa North	-.566**	.568	.442	1.555	-1.901**	.149
	(.090)		(.400)		(.346)	4.430*
Iowa South	-.074	.929	-.189	.828	-.635**	.530
	(.075)		(.465)		(.223)	.866
Minnesota	.334**	1.397	.453	1.573	.109	1.115
	(.063)		(.284)		(.189)	1.010
Missouri East	-.711**	.491	.012	1.012	-.893**	.409
	(.073)		(.317)		(.204)	2.400*
Missouri West	-.830**	.436	-.101	.904	-1.028**	.358
	(.078)		(.306)		(.215)	2.477*
Nebraska	.067	1.069	.601*	1.823	.326	1.386
	(.064)		(.303)		(.157)	.805
North Dakota	.181*	1.198	.898**	2.455	-.171	.842
	(.088)		(.368)		(.263)	2.363*

Table 3. District Court Coefficients Derived from the Full Multinomial Logistic Regression Model for the Judicial Downward Departure Decision (cont.)

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)/ Z
South Dakota	-.288**	.750	-.056	.946	-.410	.664
	(.078)		(.417)		(.236)	.738
Alaska	.209**	1.233	.521	1.683	-.679*	.507
	(.086)		(.420)		(.354)	2.183*
Arizona	2.116**	8.296	2.535**	12.611	1.769**	5.865
	(.045)		(.208)		(.130)	3.126*
California Central	-.258**	.773	.422	1.525	-.732**	.481
	(.058)		(.261)		(.173)	3.689*
California East	-.466**	.628	-.045	.956	-.996**	.369
	(.059)		(.280)		(.191)	2.802*
California North	.509**	1.663	.560	1.750	.468**	1.596
	(.055)		(.322)		(.164)	.255
California South	1.724**	5.609	1.377**	3.961	1.607**	4.986
	(.045)		(.216)		(.136)	-.902
Guam	-1.719**	.179	-.420	.657	-2.409*	.090
	(.222)		(.751)		(1.019)	1.572
Hawaii	-.259**	.772	-.025	.975	-.568*	.567
	(.083)		(.502)		(.274)	.949
Idaho	.204*	1.227	.654	1.923	.576**	1.779
	(.094)		(.478)		(.216)	.148
Montana	.017	1.017	.571	1.769	-1.158**	.314
	(.075)		(.344)		(.287)	3.856*
Nevada	-.102	.903	.103	1.109	-.317**	.728
	(.061)		(.279)		(.173)	1.281
No. Mariana Islands	-2.637**	.072	-13.860	.000	-16.835	.000
	(1.007)		(3,300.553)		(2,899.179)	.001
Oregon	.440**	1.553	.649**	1.913	.484	1.623
	(.059)		(.250)		(.174)	.540
Washington East	.879**	2.408	.866**	2.379	.595**	1.812
	(.061)		(.315)		(.174)	.756
Washington West	.611**	1.842	.652**	1.920	.681**	1.976
	(.057)		(.264)		(.165)	-.092
Colorado	.024	1.024	.502	1.652	-.457*	.633
	(.065)		(.278)		(.204)	2.786*
Kansas	-.480**	.619	.268	1.307	-1.108**	.330
	(.073)		(.304)		(.229)	3.618*
New Mexico	.752**	2.122	1.182**	3.261	.711**	2.036
	(.048)		(.230)		(.136)	1.762
Oklahoma East	.241*	1.273	-.458	.633	.290	1.336
	(.110)		(.755)		(.320)	-.911

Table 3. District Court Coefficients Derived from the Full Multinomial Logistic Regression Model for the Judicial Downward Departure Decision (cont.)

	Full Model FY1993 – FY2003		Full Model FY1993		Full Model FY2003	
Variable	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)	B /(S.E.)	Exp(B)/ Z
Oklahoma North	-.641**	.527	.496	1.643	-2.642**	.071
	(.106)		(.342)		(.724)	3.919*
Oklahoma West	-1.144**	.319	-.214	.808	-2.378**	.093
	(.111)		(.337)		(.597)	3.157*
Utah	-.123*	.884	.847**	2.332	-.533**	.587
	(.063)		(.277)		(.174)	4.221*
Wyoming	-.313**	.731	.190	1.210	-.660*	.517
	(.100)		(.400)		(.280)	1.741
Alabama Middle	-.696**	.499	-.808	.446	-.833*	.435
	(.116)		(.494)		(.388)	.040
Alabama North	-1.118**	.327	-.674	.509	-1.557**	.211
	(.098)		(.458)		(.308)	1.599
Alabama South	-.953**	.386	-1.170**	.310	-.757**	.469
	(.101)		(.456)		(.270)	-.781
Florida Middle	-.565**	.568	-.264	.768	-.682**	.505
	(.055)		(.249)		(.163)	1.404
Florida North	-1.197**	.302	-.346	.708	-1.604**	.201
	(.099)		(.346)		(.363)	2.511*
Florida South	-1.041**	.353	-.683**	.505	-1.369**	.254
	(.054)		(.249)		(.169)	2.281*
Georgia Middle	-1.029**	.357	-.016	.984	-1.488**	.226
	(.096)		(.324)		(.332)	3.170*
Georgia North	-.096	.909	.385	1.470	-.662**	.516
	(.058)		(.250)		(.190)	3.333*
Georgia South	-.783**	.457	.201	1.222	-1.142**	.319
	(.098)		(.349)		(.323)	2.824*
Dist. of Columbia	-.089	.915	.685**	1.984	-.244	.783
	(.068)		(.260)		(.208)	2.787*
N	517,981		38,161		63,426	
Nagelkerke R^2 Value	.315		.307		.325	
Model Prediction Rate	70.3%		76.6%		71.2%	

1 = Reference Category, the District Court that was held constant in the model.
* $p < .05$ ** $p < .01$

APPENDIX C

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Table 1. Defendant's Gender

Variable Description	N	Percent
Male	487,446	(85.1%)
Female	83,728	(14.6%)
Missing	1,366	(0.2%)
TOTAL	572,540	(100.0%)

Table 2. Year of Sentencing by Defendant's Gender

Variable	Males		Females		TOTAL	
Description	N	Percent	N	Percent	N	Percent
1993	35,614	(84.6%)	6,460	(15.4%)	42,074	(100.0%)
1994	33,818	(84.6%)	6,148	(15.4%)	39,966	(100.0%)
1995	32,745	(85.1%)	5,742	(14.9%)	38,487	(100.0%)
1996	35,893	(84.6%)	6,540	(15.4%)	42,433	(100.0%)
1997	41,478	(85.0%)	7,304	(15.0%)	48,782	(100.0%)
1998	43,054	(84.9%)	7,646	(15.1%)	50,700	(100.0%)
1999	46,946	(84.6%)	8,563	(15.4%)	55,509	(100.0%)
2000	51,067	(85.7%)	8,555	(14.3%)	59,622	(100.0%)
2001	51,197	(85.5%)	8,658	(14.5%)	59,855	(100.0%)
2002	55,077	(86.0%)	8,962	(14.0%)	64,039	(100.0%)
2003	60,557	(86.9%)	9,150	(13.1%)	69,707	(100.0%)
TOTAL*	487,446	(85.3%)	83,728	(14.7%)	571,174	(100.0%)

* There were 1,366 cases in the dataset where the Gender variable was missing.

Table 3. Defendant's Racial and Ethnic Category

Variable Description	N	Percent
White	189,538	(33.1%)
Black	148,304	(25.9%)
Hispanic	201,905	(35.3%)
Other *	22,119	(3.9%)
Missing	10,674	(1.9%)
TOTAL	572,540	(100.0%)

* The "Other" category includes Asians, American Indians, Pacific Islanders, & Alaska Natives.

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Table 4. Defendant's Racial and Ethnic Category by Gender

Variable	Male		Female	
Description	N	Percent	N	Percent
White	156,808	(32.7%)	32,705	(40.0%)
Black	123,129	(25.7%)	25,168	(30.8%)
Hispanic	181,900	(37.9%)	19,800	(24.2%)
Other	17,952	(3.7%)	4,131	(5.0%)
TOTAL*	479,789	(100.0%)	81,804	(100.0%)

* There were 10,947 cases in the dataset where the Race, Ethnicity and/or Gender variables were missing. The "Other" category includes Asians, American Indians, Pacific Islanders, & Alaska Natives.

Table 5. Defendant's Racial and Ethnic Category by Gender Combined

Variable Description	N	Percent
White Male	156,808	(27.4%)
Black Male	123,129	(21.5%)
Hispanic Male	181,900	(31.8%)
Other Male	17,952	(3.1%)
White Female	32,705	(5.7%)
Black Female	25,168	(4.4%)
Hispanic Female	19,800	(3.5%)
Other Female	4,131	(0.7%)
Missing	10,947	(1.9%)
TOTAL*	572,540	(100.0%)

* There were 10,947 cases in the dataset where the Race, Ethnicity and/or Gender variables were missing. The "Other" category includes Asians, American Indians, Pacific Islanders, & Alaska Natives.

Table 6. Defendant's Age Range Categories

Variable Description	N	Percent
Less Than 21	28,087	(4.9%)
21 through 25	102,930	(18.0%)
26 through 30	111,881	(19.5%)
31 though 35	96,227	(16.8%)
36 through 40	77,353	(13.5%)
41 through 50	94,900	(16.6%)
More Than 50	50,619	(8.8%)
Missing	10,543	(1.8%)
TOTAL	572,540	(100.0%)

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Table 7. Defendant's Age Range Categories by Gender

Variable	Male		Female	
Description	N	Percent	N	Percent
Less Than 21	24,005	(5.0%)	4,008	(4.8%)
21 through 25	88,189	(18.4%)	14,569	(17.6%)
26 through 30	96,438	(20.2%)	15,264	(18.4%)
31 though 35	82,137	(17.2%)	13,933	(16.8%)
36 through 40	64,776	(13.5%)	12,478	(15.1%)
41 through 50	79,305	(16.6%)	15,481	(18.7%)
More Than 50	43,501	(9.1%)	7,052	(8.5%)
TOTAL*	478,351	(100.0%)	82,785	(100.0%)

* There were 11,404 cases in the dataset where the Age Range and/or Gender variables were missing.

Table 8. Defendant's Age Range Categories by Racial and Ethnic Category

Variable	White		Black		Hispanic	
Description	N	Percent	N	Percent	N	Percent
Less Than 21	6,244	(3.3%)	8,462	(5.7%)	11,119	(5.7%)
21 through 25	22,433	(11.9%)	34,984	(23.6%)	39,840	(20.5%)
26 through 30	26,196	(13.9%)	35,615	(24.1%)	44,694	(22.9%)
31 though 35	28,463	(15.1%)	25,725	(17.4%)	37,281	(19.1%)
36 through 40	28,706	(15.2%)	17,827	(12.0%)	26,783	(13.8%)
41 through 50	45,111	(23.9%)	18,524	(12.5%)	25,979	(13.3%)
More Than 50	31,898	(16.9%)	6,822	(4.6%)	9,077	(4.7%)
TOTAL*	189,051	(100.0%)	147,959	(100.0%)	194,773	(100.0%)

* There were 22,002 cases in the "Other" category and 18,755 cases were missing these variables.

Table 9. Defendant's Citizenship Status

Variable Description	N	Percent
U.S. Citizen	382,734	(66.8%)
Non-U.S. Citizen	170,097	(29.7%)
Missing	19,709	(3.4%)
TOTAL	572,540	(100.0%)

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Table 10. Defendant's Citizenship Status by Gender

Variable	Male		Female	
Description	N	Percent	N	Percent
U.S. Citizen	315,706	(66.9%)	66,994	(83.3%)
Non-U.S. Citizen	156,510	(33.1%)	13,431	(16.7%)
TOTAL*	472,216	(100.0%)	80,425	(100.0%)

* There were 19,899 cases in the dataset where the Citizenship and/or Gender variables were missing.

Table 11. Defendant's Citizenship Status by Racial and Ethnic Category

Variable	White		Black		Hispanic	
Description	N	Percent	N	Percent	N	Percent
U.S. Citizen	177,958	(95.0%)	133,890	(91.3%)	55,043	(28.1%)
Non-U.S. Citizen	9,392	(5.0%)	12,757	(8.7%)	140,599	(71.9%)
TOTAL*	187,350	(100.0%)	146,647	(100.0%)	195,642	(100.0%)

* There were 21,668 cases in the "Other" race category and 21,233 cases were missing these variables.

Table 12. Defendant's Citizenship Status by Age Category

Variable	U.S. Citizen		Non-U.S. Citizen	
Description	N	Percent	N	Percent
Less Than 21	19,259	(5.0%)	7,299	(4.4%)
21 through 25	69,286	(18.1%)	30,240	(18.4%)
26 through 30	70,792	(18.5%)	38,261	(23.3%)
31 though 35	59,801	(15.7%)	34,052	(20.7%)
36 through 40	50,879	(13.3%)	24,643	(15.0%)
41 through 50	69,759	(18.3%)	22,987	(14.0%)
More Than 50	42,306	(11.1%)	7,065	(4.3%)
TOTAL*	382,082	(100.0%)	164,547	(100.0%)

* There were 25,911 cases in the dataset where the Citizenship and/or Age variables were missing.

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Table 13. Defendant's Educational Attainment Category

Variable Description	N	Percent
Less Than H.S. Graduate	230,134	(40.2%)
High School Graduate	163,757	(28.6%)
Some College	98,659	(17.2%)
College Graduate	36,692	(6.4%)
Missing	43,298	(7.6%)
TOTAL	572,540	(100.0%)

Table 14. Defendant's Educational Attainment by Gender

Variable	Male		Female	
Description	N	Percent	N	Percent
Less Than H.S. Graduate	203,868	(45.3%)	26,250	(33.2%)
High School Graduate	136,006	(30.2%)	27,743	(35.1%)
Some College	78,373	(17.4%)	20,277	(25.6%)
College Graduate	31,857	(7.1%)	4,831	(6.1%)
TOTAL*	450,104	(100.0%)	79,101	(100.0%)

* There were 43,335 cases in the dataset where the Education and/or Gender variables were missing.

Table 15. Defendant's Educational Attainment by Racial and Ethnic Category

Variable	White		Black		Hispanic	
Description	N	Percent	N	Percent	N	Percent
< H.S. Grad.	46,915	(25.2%)	56,689	(38.8%)	118,579	(67.9%)
H.S. Grad.	70,828	(38.0%)	51,953	(35.5%)	34,053	(19.5%)
Some College	45,415	(24.4%)	31,101	(21.3%)	17,436	(10.0%)
College Grad.	23,114	(12.4%)	6,404	(4.4%)	4,634	(2.7%)
TOTAL*	186,272	(100.0%)	146,147	(100.0%)	174,702	(100.0%)

* There were 21,477 cases in the "Other" race category and 43,942 cases were missing these variables.

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Table 16. Defendant's Educational Attainment by Age Category

Variable	< H.S. Grad.		H.S. Grad		Some College		College Grad.	
Description	N	Percent	N	Percent	N	Percent	N	Percent
Less Than 21	17,013	(7.4%)	6,563	(4.0%)	2,084	(2.1%)	36	(0.1%)
21 through 25	50,778	(22.1%)	29,085	(17.8%)	14,923	(15.2%)	1,053	(2.9%)
26 through 30	48,809	(21.3%)	33,535	(20.5%)	18,712	(19.0%)	3,339	(9.1%)
31 though 35	38,803	(16.9%)	29,163	(17.8%)	17,155	(17.4%)	4,990	(13.6%)
36 through 40	28,708	(12.5%)	23,609	(14.4%)	14,879	(15.1%)	5,806	(15.8%)
41 through 50	30,292	(13.2%)	27,771	(17.0%)	20,603	(20.9%)	11,869	(32.4%)
More Than 50	15,224	(6.6%)	13,793	(8.4%)	10,140	(10.3%)	9,538	(26.0%)
TOTAL*	229,627	(100.0%)	163,519	(100.0%)	98,496	(100.0%)	36,631	(100.0%)

* There were 44,267 cases in the dataset where the Education and/or Age variables were missing.

Table 17. Number of Dependents Whom the Defendant Supports

Variable Description	N	Percent
No Dependents	203,121	(35.5%)
1 to 3 Dependents	258,828	(45.2%)
4 to 6 Dependents	60,281	(10.5%)
7 to 9 Dependents	5,477	(1.0%)
10 to 20 Dependents	997	(0.2%)
21 to 96 Dependents	171	(0.03%)
Some Dependents	135	(0.02%)
Missing	43,530	(7.6%)
TOTAL	572,540	(100.0%)

Table 18. Number of Dependents Whom the Defendant Supports by Gender

Variable	Male		Female	
Description	N	Percent	N	Percent
No Dependents	173,921	(38.6%)	29,172	(37.1%)
1 to 3 Dependents	216,470	(48.1%)	42,340	(53.8%)
4 to 6 Dependents	53,695	(11.9%)	6,582	(8.4%)
7 to 9 Dependents	5,046	(1.1%)	428	(0.5%)
10 to 20 Dependents	882	(0.2%)	115	(0.1%)
21 to 96 Dependents	128	(0.0%)	43	(0.1%)
TOTAL*	450,142	(100.0%)	78,680	(100.0%)

* There were 43,718 cases in the dataset where the Dependents and/or Gender variables were missing.

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Table 19. Number of Dependents Whom the Defendant Supports by Racial and Ethnic Category

Variable	White		Black		Hispanic	
Description	N	Percent	N	Percent	N	Percent
No Depen.	84,929	(46.1%)	51,167	(35.2%)	57,387	(32.4%)
1 to 3 Depen.	85,734	(46.6%)	75,309	(51.8%)	87,944	(49.6%)
4 to 6 Depen.	12,491	(6.8%)	16,409	(11.3%)	28,875	(16.3%)
7 to 9 Depen.	682	(0.4%)	1,973	(1.4%)	2,539	(1.4%)
10 to 20 Depen.	157	(0.1%)	434	(0.3%)	352	(0.2%)
21 to 96 Depen.	58	(0.0%)	61	(0.0%)	42	(0.0%)
TOTAL*	184,051	(100.0%)	145,353	(100.0%)	177,139	(100.0%)

* There were 21,314 cases in the "Other" race category and 44,683 cases were missing these variables.

Table 20. Defendant's Crime Type Category

Variable Description	N	Percent
Fraud, Deceit, & Counterfeiting Offenses	10,155	(17.7%)
Larceny, Embezzlement, Theft, & Money Laund.	48,430	(8.5%)
Immigration Offenses	84,762	(14.8%)
Drug Offenses	234,366	(40.9%)
Robbery & Firearms Offenses	57,130	(10.0%)
Other Offenses	43,862	(7.7%)
Missing	2,435	(0.4%)
TOTAL	572,540	(100.0%)

Table 21. Defendant's Crime Type Category by Gender

Variable	Male		Female	
Description	N	Percent	N	Percent
Fraud, Deceit, & Counterfeiting	74,117	(15.3%)	27,319	(32.7%)
Larceny, Embezzl., Theft, M.L.	35,873	(7.4%)	12,479	(14.9%)
Immigration Offenses	79,690	(16.4%)	4,843	(5.8%)
Drug Offenses	204,070	(42.0%)	30,190	(36.2%)
Robbery & Firearms Offenses	54,417	(11.2%)	2,698	(3.2%)
Other Offenses	37,796	(7.8%)	5,952	(7.1%)
TOTAL *	485,963	(100.0%)	83,481	(100.0%)

* There were 3,096 cases in the dataset where the Crime Type and/or Gender variables were missing.

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Table 22. Defendant's Crime Type Category by Race and Ethnicity

Variable	White		Black		Hispanic	
Description	N	Percent	N	Percent	N	Percent
Fraud, Deceit, Counter.	54,803	(29.0%)	27,683	(18.7%)	12,196	(6.1%)
Larc., Emb., Theft, M.L.	23,124	(12.2%)	13,300	(9.0%)	7,538	(3.7%)
Immigration Offenses	3,811	(2.0%)	2,956	(2.0%)	75,257	(37.4%)
Drug Offenses	62,531	(33.0%)	71,233	(48.1%)	94,119	(46.7%)
Robbery & Firearms	23,151	(12.2%)	25,823	(17.4%)	6,096	(3.0%)
Other Offenses	21,805	(11.5%)	7,182	(4.8%)	6,200	(3.1%)
TOTAL *	189,225	(100.0%)	148,177	(100.0%)	201,406	(100.0%)

* There were 22,073 cases in the "Other" race category and 11,659 cases were missing these variables.

Table 23. Defendant's Crime Type Category by Citizenship

Variable	U.S. Citizen		Non-U.S. Citizen	
Description	N	Percent	N	Percent
Fraud, Deceit, & Counterfeiting	84,810	(22.2%)	13,865	(8.2%)
Larceny, Embezzl., Theft, & M.L.	39,546	(10.3%)	6,106	(3.6%)
Immigration Offenses	6,907	(1.8%)	74,790	(44.0%)
Drug Offenses	162,295	(42.4%)	67,386	(39.7%)
Robbery & Firearms Offenses	53,359	(14.0%)	3,123	(1.8%)
Other Offenses	35,430	(9.3%)	4,594	(2.7%)
TOTAL *	382,347	(100.0%)	169,864	(100.0%)

* There were 20,329 cases in the dataset where the Crime Type and/or Citizenship variables were missing.

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Table 24. Defendant's Final Offense Level

Variable Description	N	Percent
Level 1	125	(0.02%)
Level 2	6,551	(1.1%)
Level 3	2,193	(0.4%)
Level 4	16,451	(2.9%)
Level 5	3,575	(0.6%)
Level 6	25,336	(4.4%)
Level 7	12,585	(2.2%)
Level 8	18,358	(3.2%)
Level 9	13,666	(2.4%)
Level 10	34,268	(6.0%)
Level 11	12,598	(2.2%)
Level 12	23,001	(4.0%)
Level 13	36,121	(6.3%)
Level 14	9,933	(1.7%)
Level 15	21,284	(3.7%)
Level 16	8,292	(1.4%)
Level 17	21,503	(3.8%)
Level 18	7,780	(1.4%)
Level 19	18,852	(3.3%)
Level 20	7,235	(1.3%)
Level 21	52,772	(9.2%)
Level 22	7,307	(1.3%)
Level 23	27,109	(4.7%)
Level 24	7,599	(1.3%)
Level 25	19,509	(3.4%)
Level 26	7,191	(1.3%)
Level 27	16,851	(2.9%)
Level 28	5,353	(0.9%)
Level 29	21,439	(3.7%)
Level 30	6,284	(1.1%)
Level 31	17,897	(3.1%)
Level 32	5,969	(1.0%)
Level 33	9,598	(1.7%)
Level 34	8,113	(1.4%)
Level 35	6,588	(1.2%)
Level 36	3,253	(0.6%)
Level 37	3,776	(0.7%)
Level 38	2,985	(0.5%)
Level 39	1,542	(0.3%)
Level 40	2,169	(0.4%)
Level 41	893	(0.2%)

Table 24. Defendant's Final Offense Level (continued)

Variable Description	N	Percent
Level 42	1,118	(0.2%)
Level 43	1,886	(0.3%)
Level 44	181	(0.0%)
Level 45	122	(0.0%)
Level 46	127	(0.0%)
Level 47	53	(0.0%)
Level 48	48	(0.0%)
Level 49	20	(0.0%)
Level 50	15	(0.0%)
Level 51	9	(0.0%)
Level 52	10	(0.0%)
Level 53	5	(0.0%)
Missing	35,042	(6.1%)
TOTAL	572,540	(100.0%)

Table 25. Defendant's Sentencing Zone

Variable Description	N	Percent
Zone A	66,133	(11.6%)
Zone B	46,934	(8.2%)
Zone C	35,262	(6.2%)
Zone D	393,417	(68.7%)
Missing	30,794	(5.4%)
TOTAL	572,540	(100.0%)

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Table 26. Defendant's Sentencing Zone by Gender

Variable	Male		Female	
Description	N	Percent	N	Percent
Zone A	46,803	(10.2%)	18,496	(23.2%)
Zone B	35,446	(7.7%)	11,449	(14.4%)
Zone C	27,522	(6.0%)	7,716	(9.7%)
Zone D	351,328	(76.2%)	41,929	(52.7%)
TOTAL*	461,099	(100.0%)	79,590	(100.0%)

* There were 31,851 cases in the dataset where the Zone and/or Gender variables were missing.

Table 27. Defendant's Sentencing Zone by Race and Ethnicity

Variable	White		Black		Hispanic	
Description	N	Percent	N	Percent	N	Percent
Zone A	25,099	(13.8%)	14,094	(9.9%)	18,827	(9.9%)
Zone B	19,409	(10.7%)	10,914	(7.7%)	13,629	(7.2%)
Zone C	14,867	(8.2%)	7,384	(5.2%)	10,989	(5.8%)
Zone D	122,562	(67.4%)	110,031	(77.3%)	145,855	(77.0%)
TOTAL*	181,937	(100.0%)	142,423	(100.0%)	189,300	(100.0%)

* There were 20,992 cases in the "Other" race category and 37,888 cases were missing these variables.

Table 28. Defendant's Sentencing Zone by Citizenship

Variable	U.S. Citizen		Non-U.S. Citizen	
Description	N	Percent	N	Percent
Zone A	40,735	(11.0%)	18,109	(11.4%)
Zone B	33,266	(9.0%)	12,366	(7.8%)
Zone C	24,734	(6.7%)	9,762	(6.2%)
Zone D	269,961	(73.2%)	118,395	(74.6%)
TOTAL*	368,696	(100.0%)	158,632	(100.0%)

* There were 45,212 cases where the Sentencing Zone and/or Citizenship variables were missing.

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Table 29. Defendant's Sentencing Zone by In/Out Prison Decision

Variable Description	No Prison N	No Prison Percent	Prison N	Prison Percent
Zone A	45,205	(68.9%)	20,442	(31.1%)
Zone B	23,576	(50.5%)	23,134	(49.5%)
Zone C	7,172	(20.4%)	27,954	(79.6%)
Zone D	18,450	(4.7%)	373,435	(95.3%)
TOTAL*	94,403	(17.5%)	444,965	(82.5%)

* There were 33,172 cases in the dataset where the Zone and/or In/Out Decision variables were missing.

Table 30. Defendant's Sentencing Zone by Departure Status

Variable Description	No Departure N	No Departure Percent	Upward Departure N	Upward Departure Percent	Downward Departure N	Downward Departure Percent	Sub. Assist. Departure N	Sub. Assist. Departure Percent
Zone A	58,985	(97.0%)	388	(0.6%)	493	(0.8%)	935	(1.5%)
Zone B	37,784	(82.6%)	315	(0.7%)	3,677	(8.0%)	3,971	(8.7%)
Zone C	22,467	(65.5%)	215	(0.6%)	6,510	(19.0%)	5,121	(14.9%)
Zone D	232,754	(60.8%)	3,420	(0.9%)	60,411	(15.8%)	86,443	(22.6%)
TOTAL*	351,990	(67.2%)	4,338	(0.8%)	71,091	(13.6%)	96,470	(18.4%)

* There were 48,651 cases where the Sentencing Zone and/or Departure Status variables were missing.

Table 31. Defendant's Final Offense Level Score

N	Mean	Median	Standard Deviation	Range Min.	Range Max.
537,498	18.39	18.00	9.236	1	53

* There were 35,042 cases in the dataset where the Final Offense Level (FOL) score variable was missing.

Table 32. Defendant's Final Offense Level Score by Gender

	N	Mean	Median	Standard Deviation	Range Min.	Range Max.
Male	457,885	19.06	19.00	9.214	1	53
Female	79,175	14.55	12.00	8.373	1	50

* There were 35,042 cases in the dataset where the Final Offense Level (FOL) score variable was missing and 438 cases where the Gender variable was missing.

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Table 33. Defendant's Final Offense Level Score by Race and Ethnicity

	N	Mean	Median	Standard Deviation	Range Min.	Range Max.
White	181,590	16.77	15.00	8.613	1	51
Black	142,143	20.85	21.00	10.203	1	53
Hispanic	187,507	18.47	19.00	8.542	1	53
Other	20,959	16.37	14.00	9.177	1	52

* There were 35,042 cases in the dataset where the Final Offense Level (FOL) score variable was missing and 5,299 cases where the Race and Ethnicity variable was missing.

Table 34. Defendant's Final Offense Level Score by Gender and Race and Ethnicity Variables Combined

	N	Mean	Median	Standard Deviation	Range Min.	Range Max.
White Male	150,122	17.37	16.00	8.643	1	51
White Female	31,453	13.93	12.00	7.870	1	46
Black Male	118,124	22.16	23.00	9.952	1	53
Black Female	24,013	14.42	11.00	8.901	1	50
Hispanic Male	168,665	18.69	21.00	8.547	1	53
Hispanic Female	18,718	16.54	15.00	8.245	1	46
Other Male	17,008	17.31	15.00	9.263	1	52
Other Female	3,926	12.34	10.00	7.541	1	42

* There were 35,042 cases in the dataset where the Final Offense Level (FOL) score variable was missing and 5,469 cases where the Gender or Race and Ethnicity variables were missing. The "Other" race category includes Asians, American Indians, Pacific Islanders, & Alaska Natives.

Table 35. Defendant's Final Offense Level Score by Citizenship

	N	Mean	Median	Standard Deviation	Range Min.	Range Max.
U.S. Cit.	368,101	18.78	18.00	9.463	1	53
Non-Cit.	157,196	17.91	19.00	8.453	1	52

* There were 35,042 cases in the dataset where the Final Offense Level (FOL) score variable was missing and 12,201 cases where the Citizenship status variable was missing.

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Table 36. Defendant's Final Criminal History Category

Variable Description	N	Percent
Category I	291,230	(50.9%)
Category II	59,396	(10.4%)
Category III	74,018	(12.9%)
Category IV	41,923	(7.3%)
Category V	24,961	(4.4%)
Category VI	49,432	(8.6%)
Missing	31,580	(5.5%)
TOTAL	572,540	(100.0%)

Table 37. Defendant's Final Criminal History Category by Gender

Variable	Male		Female	
Description	N	Percent	N	Percent
Category I	229,998	(49.9%)	60,915	(76.8%)
Category II	52,416	(11.4%)	6,948	(8.8%)
Category III	67,801	(14.7%)	6,188	(7.8%)
Category IV	39,723	(8.6%)	2,179	(2.7%)
Category V	23,788	(5.2%)	1,157	(1.5%)
Category VI	47,481	(10.3%)	1,927	(2.4%)
TOTAL*	461,207	(100.0%)	79,314	(100.0%)

* There were 32,019 cases in the dataset where the Criminal History and/or Gender variables were missing.

Table 38. Defendant's Final Criminal History Category by Race and Ethnicity

Variable	White		Black		Hispanic	
Description	N	Percent	N	Percent	N	Percent
Category I	111,519	(61.2%)	58,619	(41.1%)	102,464	(53.9%)
Category II	20,109	(11.0%)	17,048	(12.0%)	19,694	(10.4%)
Category III	21,065	(11.6%)	24,034	(16.9%)	26,408	(13.9%)
Category IV	10,211	(5.6%)	14,546	(10.2%)	16,050	(8.4%)
Category V	5,949	(3.3%)	8,460	(5.9%)	9,981	(5.3%)
Category VI	13,245	(7.3%)	19,877	(13.9%)	15,384	(8.1%)
TOTAL*	182,098	(100.0%)	142,584	(100.0%)	189,981	(100.0%)

* There were 21,011 cases in the "Other" race category and 36,866 cases were missing these variables.

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Table 39. Defendant's Final Criminal History Category by Citizenship Status

Variable	U.S. Citizen		Non-U.S. Citizen	
Description	N	Percent	N	Percent
Category I	194,609	(52.7%)	88,173	(55.2%)
Category II	43,041	(11.7%)	15,392	(9.6%)
Category III	51,687	(14.0%)	21,168	(13.3%)
Category IV	27,636	(7.5%)	13,684	(8.6%)
Category V	16,019	(4.3%)	8,585	(5.4%)
Category VI	36,167	(9.8%)	12,640	(7.9%)
TOTAL*	369,159	(100.0%)	159,642	(100.0%)

* There were 43,739 cases in the dataset where the Criminal History and/or Citizenship status variables were missing.

Table 40. Circuit Court Where the Defendant was Sentenced

Variable Description	N	Percent
D.C. Circuit	4,761	(0.8%)
First Circuit	15,868	(2.8%)
Second Circuit	46,914	(8.2%)
Third Circuit	27,243	(4.8%)
Fourth Circuit	54,853	(9.6%)
Fifth Circuit	98,925	(17.3%)
Sixth Circuit	44,996	(7.9%)
Seventh Circuit	24,934	(4.4%)
Eighth Circuit	34,042	(5.9%)
Ninth Circuit	122,887	(21.5%)
Tenth Circuit	33,128	(5.8%)
Eleventh Circuit	63,989	(11.2%)
TOTAL	572,540	(100.0%)

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Table 41. Circuit Court Where the Defendant was Sentenced by Gender

Variable	Male		Female	
Description	N	Percent	N	Percent
D.C. Circuit	3,864	(0.8%)	890	(1.1%)
First Circuit	13,910	(2.9%)	1,938	(2.3%)
Second Circuit	39,980	(8.2%)	6,796	(8.1%)
Third Circuit	23,214	(4.8%)	3,980	(4.8%)
Fourth Circuit	45,863	(9.4%)	8,765	(10.5%)
Fifth Circuit	84,981	(17.4%)	13,792	(16.5%)
Sixth Circuit	36,686	(7.5%)	8,237	(9.8%)
Seventh Circuit	20,837	(4.3%)	4,068	(4.9%)
Eighth Circuit	28,829	(5.9%)	5,183	(6.2%)
Ninth Circuit	107,059	(22.0%)	15,376	(18.4%)
Tenth Circuit	28,474	(5.8%)	4,586	(5.5%)
Eleventh Circuit	53,749	(11.0%)	10,117	(12.1%)
TOTAL*	487,446	(100.0%)	83,728	(100.0%)

* There were 1,366 cases in the dataset where the Circuit Court and/or Gender variables were missing.

Table 42. Circuit Court Where the Defendant was Sentenced by Race and Ethnicity

Variable	White		Black		Hispanic	
Description	N	Percent	N	Percent	N	Percent
D.C. Circuit	562	(0.3%)	3,636	(2.5%)	421	(0.2%)
First Circuit	5,995	(3.2%)	1,583	(1.1%)	7,698	(3.8%)
Second Circuit	16,540	(8.7%)	12,410	(8.4%)	14,531	(7.2%)
Third Circuit	11,252	(5.9%)	9,490	(6.4%)	5,406	(2.7%)
Fourth Circuit	19,010	(10.0%)	28,330	(19.1%)	3,980	(2.0%)
Fifth Circuit	20,412	(10.8%)	18,631	(12.6%)	57,695	(28.6%)
Sixth Circuit	21,922	(11.6%)	17,786	(12.0%)	4,106	(2.0%)
Seventh Circuit	10,686	(5.6%)	9,855	(6.6%)	3,455	(1.7%)
Eighth Circuit	16,440	(8.7%)	8,827	(6.0%)	5,676	(2.8%)
Ninth Circuit	32,928	(17.4%)	9,910	(6.7%)	67,776	(33.6%)
Tenth Circuit	12,039	(6.4%)	4,105	(2.8%)	14,747	(7.3%)
Eleventh Circuit	21,752	(11.5%)	23,741	(16.0%)	16,414	(8.1%)
TOTAL*	189,538	(100.0%)	148,304	(100.0%)	201,905	(100.0%)

* There were 22,119 cases in the "Other" race category and 10,674 cases were missing these variables.

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Table 43. Circuit Court Where the Defendant was Sentenced by Citizenship

Variable Description	U.S. Citizen N	U.S. Citizen Percent	Non-U.S. Citizen N	Non-U.S. Citizen Percent
D.C. Circuit	4,134	(1.1%)	570	(0.3%)
First Circuit	11,372	(3.0%)	3,692	(2.2%)
Second Circuit	28,856	(7.5%)	16,595	(9.8%)
Third Circuit	21,440	(5.6%)	5,006	(2.9%)
Fourth Circuit	46,723	(12.2%)	5,012	(2.9%)
Fifth Circuit	55,861	(14.6%)	39,233	(23.1%)
Sixth Circuit	40,403	(10.6%)	3,358	(2.0%)
Seventh Circuit	21,576	(5.6%)	2,868	(1.7%)
Eighth Circuit	28,818	(7.5%)	4,735	(2.8%)
Ninth Circuit	56,709	(14.8%)	61,148	(35.9%)
Tenth Circuit	21,094	(5.5%)	11,373	(6.7%)
Eleventh Circuit	45,748	(12.0%)	16,507	(9.7%)
TOTAL*	382,734	(100.0%)	170,097	(100.0%)

* There were 19,709 cases in the dataset where the Circuit Court and/or Citizenship variables were missing.

Table 44. Defendant's Number of Counts of Conviction

N	Mean	Median	Standard Deviation	Range Minimum	Range Maximum
570,812	1.55	1.00	2.884	1	495

* There were 1,728 cases in the dataset where the Counts of Conviction variable was missing.

Table 45. Defendant's Number of Counts of Conviction by Gender

	N	Mean	Median	Standard Deviation	Range Min.	Range Max.
Male	486,574	1.57	1.00	2.930	1	495
Female	83,569	1.46	1.00	2.606	1	222

* There were 2,397 cases in the dataset where the Counts of Conviction and/or Gender variables were missing.

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Table 46. Defendant's Number of Counts of Conviction by Race and Ethnicity

	N	Mean	Median	Standard Deviation	Range Min.	Range Max.
White	189,480	1.80	1.00	4.063	1	495
Black	148,263	1.62	1.00	2.367	1	158
Hispanic	201,637	1.26	1.00	1.680	1	225
Other	22,107	1.60	1.00	2.640	1	101

* There were 11,053 cases in the dataset where the Counts of Conviction and/or Race and Ethnicity variables were missing.

Table 47. Defendant's Number of Counts of Conviction by Gender and Race and Ethnicity Variables Combined

	N	Mean	Median	Standard Deviation	Range Min.	Range Max.
White Male	156,757	1.86	1.00	4.245	1	495
White Female	32,699	1.55	1.00	3.032	1	93
Black Male	123,096	1.65	1.00	2.410	1	158
Black Female	25,161	1.46	1.00	2.133	1	93
Hispanic Male	181,677	1.26	1.00	1.563	1	225
Hispanic Female	19,766	1.31	1.00	2.516	1	222
Other Male	17,944	1.61	1.00	2.697	1	101
Other Female	4,130	1.53	1.00	2.385	1	51

* There were 11,310 cases in the dataset where the Counts of Conviction or the Gender variable or the Race and Ethnicity variable were missing. The "Other" race category includes Asians, American Indians, Pacific Islanders, & Alaska Natives.

Table 48. Defendant's Number of Counts of Conviction by Citizenship Status

	N	Mean	Median	Standard Deviation	Range Min.	Range Max.
U.S. Citizen	382,692	1.68	1.00	3.259	1	495
Non-Citizen	170,073	1.27	1.00	1.862	1	266

* There were 19,775 cases in the dataset where the Counts of Conviction and/or Citizenship status variables were missing.

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Table 49. Defendant's Disposition

Variable Description	N	Percent
Guilty Plea	534,728	(93.4%)
Nolo Contendere	455	(0.1%)
Jury Trial	33,790	(5.9%)
Trial by Judge or Bench Trial	594	(0.1%)
Both Guilty Plea & Trial (>1 count)	612	(0.1%)
Missing	2,361	(0.4%)
TOTAL	572,540	(100.0%)

Table 50. Defendant's Disposition by Gender

Variable	Male		Female	
Description	N	Percent	N	Percent
Plea	454,612	(93.6%)	79,906	(95.8%)
Trial	30,868	(6.4%)	3,503	(4.2%)
TOTAL*	485,480	(100.0%)	83,409	(100.0%)

* There were 3,651 cases in the dataset where the Disposition and/or Gender variables were missing.

Table 51. Defendant's Disposition by Race and Ethnicity

Variable	White		Black		Hispanic	
Description	N	Percent	N	Percent	N	Percent
Plea	177,339	(93.8%)	134,549	(91.0%)	193,759	(96.3%)
Trial	11,681	(6.2%)	13,336	(9.0%)	7,530	(3.7%)
TOTAL*	189,020	(100.0%)	147,885	(100.0%)	201,289	(100.0%)

* There were 22,056 cases in the "Other" race category and 12,290 cases were missing these variables.

Table 52. Defendant's Disposition by Citizenship Status

Variable	U.S. Citizen		Non-U.S. Citizen	
Description	N	Percent	N	Percent
Plea	354,811	(92.9%)	163,077	(96.1%)
Trial	26,983	(7.1%)	6,688	(3.9%)
TOTAL*	381,794	(100.0%)	169,765	(100.0%)

* There were 20,981 cases in the dataset where the Disposition and/or Citizenship variables were missing.

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Table 53. Defendant's Departure Status

Variable Description	N	Percent
No Departure	363,549	(63.5%)
Upward Departure	4,384	(0.8%)
Downward Departure	71,459	(12.5%)
Substantial Assistance Departure	97,063	(17.0%)
Missing	36,085	(6.3%)
TOTAL	572,540	(100.0%)

Table 54. Defendant's Departure Status by Gender

Variable	Male		Female	
Description	N	Percent	N	Percent
No Departure	310,469	(67.9%)	52,741	(67.0%)
Upward Departure	4,071	(0.9%)	312	(0.4%)
Downward Departure	61,283	(13.4%)	10,131	(12.9%)
Sub. Assist. Departure	81,509	(17.8%)	15,507	(19.7%)
TOTAL*	457,332	(100.0%)	78,691	(100.0%)

* There were 36,517 cases in the dataset where the Departure and/or Gender variables were missing.

Table 55. Defendant's Departure Status by Race and Ethnicity

Variable	White		Black		Hispanic	
Description	N	Percent	N	Percent	N	Percent
No Departure	119,773	(66.3%)	100,408	(71.0%)	124,355	(66.1%)
Upward Depart	1,839	(1.0%)	1,177	(0.8%)	947	(0.5%)
Down Depart	19,222	(10.6%)	9,813	(6.9%)	39,697	(21.1%)
Sub. Assist.	39,710	(22.0%)	30,021	(21.2%)	23,225	(12.3%)
TOTAL*	180,544	(100.0%)	141,419	(100.0%)	188,224	(100.0%)

* There were 20,772 cases in the "Other" race category and 41,581 cases were missing these variables.

Table 56. Defendant's Departure Status by Citizenship Status

Variable	U.S. Citizen		Non-U.S. Citizen	
Description	N	Percent	N	Percent
No Departure	247,740	(67.7%)	106,376	(67.2%)
Upward Departure	3,482	(1.0%)	851	(0.5%)
Downward Departure	35,496	(9.7%)	34,483	(21.8%)
Sub. Assist. Departure	79,001	(21.6%)	16,648	(10.5%)
TOTAL*	365,719	(100.0%)	158,358	(100.0%)

* There were 48,463 cases in the dataset where the Departure and/or Citizenship variables were missing.

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Table 57. Defendant's Departure Status by Gender and Race and Ethnicity Variables Combined

Variable Description	No Departure N	No Departure Percent	Judicial Downward Departure N	Judicial Downward Departure Percent	Substan. Assist. Departure N	Substan. Assist. Departure Percent
White Male	99,205	(27.6%)	15,410	(21.7%)	32,937	(34.2%)
White Female	20,556	(5.7%)	3,812	(5.4%)	6,771	(7.0%)
Black Male	83,323	(23.2%)	7,796	(11.0%)	25,297	(26.3%)
Black Female	17,080	(4.8%)	2,017	(2.8%)	4,724	(4.9%)
Hispanic Male	112,907	(31.4%)	35,906	(50.6%)	19,891	(20.7%)
Hispanic Female	11,358	(3.2%)	3,769	(5.3%)	3,328	(3.5%)
Other Male	11,862	(3.3%)	1,867	(2.6%)	2,770	(2.9%)
Other Female	2,822	(0.8%)	452	(0.6%)	579	(0.6%)
TOTAL *	359,113	(100.0%)	71,029	(100.0%)	96,297	(100.0%)

* There were 41,742 cases where the Departure variable, Gender variable, or Race and Ethnicity variable information was missing. There were also 4,359 cases that were given upward departures, but are not included in this table. The "Other" race category includes Asians, American Indians, Pacific Islanders, & Alaska Natives.

Table 58. Circuit Court Where the Defendant was Sentenced by Departure

Variable Description	No Departure N	No Departure Percent	Judicial Downward Departure N	Judicial Downward Departure Percent	Substan. Assist. Departure N	Substan. Assist. Departure Percent
D.C. Circuit	3,328	(72.4%)	410	(8.9%)	825	(18.0%)
First Circuit	11,073	(72.7%)	1,450	(9.5%)	2,550	(16.7%)
Second Circuit	25,972	(60.7%)	7,779	(18.2%)	8,747	(20.4%)
Third Circuit	15,991	(60.2%)	1,928	(7.3%)	8,451	(31.8%)
Fourth Circuit	36,942	(74.4%)	2,098	(4.2%)	10,188	(20.5%)
Fifth Circuit	70,000	(72.6%)	11,219	(11.6%)	14,374	(14.9%)
Sixth Circuit	30,302	(69.5%)	2,571	(5.9%)	10,416	(23.9%)
Seventh Circuit	17,798	(74.1%)	1,333	(5.5%)	4,650	(19.4%)
Eighth Circuit	23,116	(69.1%)	2,847	(8.5%)	7,177	(21.5%)
Ninth Circuit	62,811	(58.4%)	31,367	(29.2%)	12,517	(11.6%)
Tenth Circuit	22,331	(71.2%)	5,051	(16.1%)	3,770	(12.0%)
Eleventh Circuit	43,885	(71.7%)	3,406	(5.6%)	13,398	(21.9%)
TOTAL*	363,549	(67.8%)	71,459	(13.3%)	97,063	(18.1%)

* There were 36,085 cases where the Departure variable or Circuit Court variable was missing. There were also 4,384 cases that were given upward departures, but are not included in this table.

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Table 59. Defendant's Receipt of Prison Sentence (In/Out Status)

Variable Description	N	Percent
Non-Prison Sentence	62,531	(60.9%)
Prison Sentence	40,139	(39.1%)
TOTAL *	102,670	(100.0%)

* There were 469,870 defendants who were either not sentenced within range, or located in Zones C or D, or missing this information.

Table 60. Defendant's Receipt of Prison Sentence (In/Out Status) by Fiscal Year

Variable	Non-Prison Sentence		Prison Sentence	
Description	N	Percent	N	Percent
FY 1993	6,768	(71.8%)	2,653	(28.2%)
FY 1994	5,915	(71.7%)	2,332	(28.3%)
FY 1995	5,405	(69.6%)	2,358	(30.4%)
FY 1996	5,392	(66.4%)	2,727	(33.6%)
FY 1997	5,805	(61.9%)	3,574	(38.1%)
FY 1998	5,171	(60.6%)	3,367	(39.4%)
FY 1999	5,565	(61.5%)	3,490	(38.5%)
FY 2000	5,596	(54.4%)	4,685	(45.6%)
FY 2001	5,263	(56.9%)	3,985	(43.1%)
FY 2002	5,389	(53.9%)	4,601	(46.1%)
FY 2003	6,262	(49.6%)	6,367	(50.4%)

* There were 469,870 defendants who were either not sentenced within range, or located in Zones C or D, or missing this information.

Table 61. Defendant's Receipt of Prison Sentence (In/Out Status) by Gender

Variable	Male		Female	
Description	N	Percent	N	Percent
Non-Prison Sentence	41,316	(55.3%)	20,542	(75.6%)
Prison Sentence	33,348	(44.7%)	6,619	(24.4%)
TOTAL *	74,664	(100.0%)	27,161	(100.0%)

* There were 845 cases in the dataset where the Gender variable was missing. The other 469,870 defendants were not sentenced within range, or located in Zones C or D, or missing this information.

TABLES

Table 62. Defendant's Receipt of Prison Sentence (In/Out Status) by Racial and Ethnic Category

Variable	White		Black		Hispanic	
Description	N	Percent	N	Percent	N	Percent
Non-Prison	30,012	(75.2%)	15,886	(68.7%)	9,596	(32.6%)
Prison Sentence	9,879	(24.8%)	7,228	(31.3%)	19,824	(67.4%)
TOTAL*	39,891	(100.0%)	23,114	(100.0%)	29,420	(100.0%)

* There were 5,844 cases in the "Other" race category and 4,401 cases were missing these variables. The other 469,870 defendants were not sentenced within range, or located in Zones C or D, or missing this information.

Table 63. Defendant's Receipt of Prison Sentence (In/Out Status) by Gender and Race and Ethnicity Variables Combined

Variable	Non-Prison Sentence		Prison Sentence	
Description	N	Percent	N	Percent
White Male	21,384	(74.1%)	7,482	(25.9%)
White Female	8,622	(78.3%)	2,393	(21.7%)
Black Male	8,808	(62.9%)	5,203	(37.1%)
Black Female	7,074	(77.8%)	2,023	(22.2%)
Hispanic Male	6,862	(27.4%)	18,168	(72.6%)
Hispanic Female	2,724	(63.2%)	1,583	(36.8%)
Other Male	2,567	(64.1%)	1,435	(35.9%)
Other Female	1,427	(78.4%)	394	(21.6%)
TOTAL *	59,468	(60.6%)	38,681	(39.4%)

* There were 4,521 cases in the dataset where the Prison or Gender or Race and Ethnicity variables were missing. The other 469,870 defendants were not sentenced within range, or located in Zones C or D or missing this information. The "Other" race category includes Asians, American Indians, Pacific Islanders, & Alaska Natives.

Table 64. Defendant's Receipt of Prison Sentence (In/Out Status) by Citizenship

Variable	U.S. Citizen		Non-U.S. Citizen	
Description	N	Percent	N	Percent
Non-Prison Sentence	49,603	(74.3%)	7,950	(28.5%)
Prison Sentence	17,148	(25.7%)	19,957	(71.5%)
TOTAL *	66,751	(100.0%)	27,907	(100.0%)

* There were 8,012 cases in the dataset where the Prison and/or Citizenship variables were missing. The other 469,870 defendants were not sentenced within range, or located in Zones C or D, or missing this information.

Table 65. Defendant's Receipt of Prison Sentence (In/Out Status) by Gender and Fiscal Year

	Males				Females			
Variable	Non-Prison Sentence		Prison Sentence		Non-Prison Sentence		Prison Sentence	
Description	N	Percent	N	Percent	N	Percent	N	Percent
FY 1993	4,557	(67.7%)	2,178	(32.3%)	2,192	(82.2%)	475	(17.8%)
FY 1994	3,930	(67.0%)	1,933	(33.0%)	1,981	(83.2%)	399	(16.8%)
FY 1995	3,750	(65.9%)	1,939	(34.1%)	1,647	(79.8%)	416	(20.2%)
FY 1996	3,596	(61.3%)	2,275	(38.7%)	1,794	(79.9%)	452	(20.1%)
FY 1997	4,012	(57.8%)	2,929	(42.2%)	1,777	(73.6%)	636	(26.4%)
FY 1998	3,400	(55.6%)	2,716	(44.4%)	1,764	(73.2%)	645	(26.8%)
FY 1999	3,583	(56.0%)	2,820	(44.0%)	1,981	(74.9%)	663	(25.1%)
FY 2000	3,673	(48.7%)	3,875	(51.3%)	1,837	(70.9%)	753	(29.1%)
FY 2001	3,482	(50.6%)	3,399	(49.4%)	1,747	(74.9%)	586	(25.1%)
FY 2002	3,435	(47.2%)	3,835	(52.8%)	1,838	(71.8%)	723	(28.2%)
FY 2003	3,898	(41.7%)	5,449	(58.3%)	1,984	(69.5%)	871	(30.5%)

Table 66. Defendant's Receipt of Prison Sentence (In/Out Status) by Race/Ethnicity and Fiscal Year

	White				Black				Hispanic			
Variable	Non-Prison		Prison		Non-Prison		Prison		Non-Prison		Prison	
Description	N	Percent	N	Percent	N	Percent	N	Percent	N	Percent	N	Percent
FY 1993	3,749	(78.4%)	1,034	(21.6%)	1,794	(71.6%)	712	(28.4%)	697	(48.4%)	743	(51.6%)
FY 1994	3,160	(78.1%)	884	(21.9%)	1,641	(72.9%)	609	(27.1%)	636	(47.0%)	716	(53.0%)
FY 1995	2,810	(77.1%)	836	(22.9%)	1,393	(70.6%)	580	(29.4%)	724	(48.4%)	772	(51.6%)
FY 1996	2,658	(77.1%)	788	(22.9%)	1,290	(70.5%)	539	(29.5%)	928	(42.8%)	1,241	(57.2%)
FY 1997	2,618	(74.8%)	880	(25.2%)	1,435	(67.2%)	700	(32.8%)	1,136	(40.0%)	1,706	(60.0%)
FY 1998	2,409	(73.8%)	856	(26.2%)	1,383	(70.3%)	584	(29.7%)	898	(34.8%)	1,679	(65.2%)
FY 1999	2,531	(75.9%)	803	(24.1%)	1,565	(69.2%)	695	(30.8%)	953	(35.8%)	1,711	(64.2%)
FY 2000	2,629	(74.3%)	907	(25.7%)	1,379	(64.4%)	761	(35.6%)	968	(26.5%)	2,685	(73.5%)
FY 2001	2,312	(75.1%)	768	(24.9%)	1,275	(67.4%)	618	(32.6%)	864	(27.9%)	2,236	(72.1%)
FY 2002	2,482	(71.0%)	1,014	(29.0%)	1,306	(66.4%)	660	(33.6%)	819	(25.2%)	2,437	(74.8%)
FY 2003	2,654	(70.5%)	1,109	(29.5%)	1,425	(64.9%)	770	(35.1%)	973	(20.0%)	3,898	(80.0%)

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Table 67. Defendant's Sentence Length (in months)

N	Mean	Median	Standard Deviation	Range Min.	Range Max.
452,438	59.35	34.00	73.200	1	470

* There were 120,102 cases in the dataset where the Sentence Length variable was missing.

Table 68. Defendant's Sentence Length by Gender

Variable Description	N	Mean	Median	Standard Deviation	Range Min.	Range Max.
Male	404,385	62.20	37.00	75.264	1	470
Female	47,729	35.41	21.00	46.114	1	470

* There were 120,426 cases in the dataset where the Sentence Length and/or Gender variables were missing.

Table 69. Defendant's Sentence Length by Race and Ethnicity

Variable Description	N	Mean	Median	Standard Deviation	Range Min.	Range Max.
White	133,560	51.51	30.00	64.500	1	470
Black	121,814	88.23	60.00	93.264	1	470
Hispanic	178,333	46.30	29.00	56.804	1	470
Other	15,444	51.06	27.00	68.091	1	470

* There were 123,389 cases in the dataset where the Sentence Length and/or Race and Ethnicity variables were missing.

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Table 70. Defendant's Sentence Length by Gender and Race and Ethnicity Variables Combined

Variable Description	N	Mean	Median	Standard Deviation	Range Min.	Range Max.
White Male	115,944	54.43	31.00	66.819	1	470
White Female	17,606	32.30	18.00	41.597	1	470
Black Male	107,829	94.28	60.00	95.398	1	470
Black Female	13,982	41.58	24.00	56.005	1	470
Hispanic Male	164,382	47.34	30.00	57.879	1	470
Hispanic Female	13,810	34.23	24.00	40.256	1	470
Other Male	13,467	54.37	30.00	70.718	1	470
Other Female	1,969	28.46	16.00	39.469	1	470

* There were 123,551 cases in the dataset where the Sentence Length and/or Race and Ethnicity variables were missing. The "Other" category includes Asians, American Indians, Pacific Islanders, & Alaska Natives.

Table 71. Defendant's Sentence Length by Citizenship

Variable Description	N	Mean	Median	Standard Deviation	Range Min.	Range Max.
U.S. Cit.	292,365	68.41	40.00	80.470	1	470
Non-Cit.	151,371	42.80	24.00	52.773	1	470

* There were 128,804 cases in the dataset where the Sentence Length and/or Citizenship status variables were missing.

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